

United States
Court of Appeals

For the Ninth Circuit.

No. 12300

WALTER D. ACKERMAN, JR., individually and as Attorney General
of the Territory of Hawaii, and JEAN LANE, individually and as
Chief of Police of the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION, a voluntary unincorporated association and labor union,
et al.,

Appellees.

E. R. BEVINS, individually and as County Attorney for the County of
Maui, and WENDELL F. CROCKETT, individually and as Deputy
to the County Attorney for the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION, a voluntary unincorporated association and labor union,
et al.,

Appellees.

No. 12301

WALTER D. ACKERMAN, JR., individually and as Attorney General
of the Territory of Hawaii,

Appellant,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION, a voluntary unincorporated association and labor union,
et al.,

Appellees.

vs.

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Transcript of Record

In Four Volumes

Volume IV Pages 1571 to 1992

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PROCEEDINGS CONTINUED

Mrs. Bouslog: It takes only about ten minutes to run the whole film. I believe there are some scenes from the first day of September running through the period September 17th, which is two days beyond the incident itself. It has the exact scene and some scenes taken the day of the incident.

Judge Biggs: Do you object to these being shown at the same time as your own?

Mr. Crockett: No, we have no objection, if the Court please, subject to the usual objections.

Judge Biggs: Is that all, Mrs. Bouslog?

Mrs. Bouslog: That's all.

Judge Biggs: Very well, the Court will take a five-minute recess.

(Recess.)

Mrs. Bouslog: Your Honor, I would like to offer this document in evidence. Mr. Crockett has examined it.

Judge Biggs: This is ILWU Research Department Hawaii Regional Office document. Was there a number reserved for it?

Mr. Symonds: No, your Honor, it would be number 27.

Judge Biggs: Very well, let it be admitted subject to the same ruling; No. 27.

(Thereupon the document referred to was marked Plaintiffs' Exhibit No. 27 and received in evidence.)

Ancestry	Men	Total—Family and Single Groups			Houses
		Women	Children	Total	
JAPANESE	1,423	1,280	3,324	6,027	
	1,133	1,124	.....	2,257	
	2,556	2,404	3,324	8,284	1,825
FILIPINO	106	80	1,153	1,339	
	1,966	326	140	2,432	
	2,072	406	1,293	3,771	1,006
CHINESE	37	32	76	145	
	38	12	.....	50	
	75	44	76	195	52
KOREAN	9	7	23	39	
	18	7	2	27	
	27	14	25	66	21
PUERTO RICAN	139	126	338	603	
	3	1	.....	4	
	142	127	338	607	105
PORTUGUESE	632	583	1,001	2,216	
	23	74	.....	97	
	655	657	1,001	2,313	503
HAWAIIAN	165	141	281	587	
	
	165	141	281	587	117
ANGLO-SAXON	181	179	132	492	
	2	2	.....	4	
	183	181	132	496	164
ALL OTHERS	51	33	275	359	
	6	10	.....	16	
	57	43	275	375	40
TOTAL OF MAUI	2,743	2,461	6,603	11,807	
	3,189	1,556	142	4,887	
	5,932	4,017	6,745	16,694	3,833

Admitted.

PLAINTIFFS EXHIBIT No. 27

ILWU Research Department Hawaii Regional Office
 Census of Hawaiian Sugar Plantations
 Total Employees and Families, Including Planters
 Summary—Maui

H.S.P.A. Census

June 30, 1947

Page 3.

Ancestry		Men	Women	Family Children	Group Total	Houses	Men	Women	Single Children	Group Total	Houses	Men	Women	Family and Single Children	Group Total	Houses
JAPANESE	Cit.....	715	785	3,203	4,703		708	495	121	1,324		1,423	1,280	3,324	6,027	
	Non-Cit.....	915	911		1,826		218	213		431		1,133	1,124		2,257	
	Total.....	1,630	1,696	3,203	6,529	1,470	926	708	121	1,755	355	2,556	2,404	3,324	8,284	1,825
FILIPINO	Cit.....	22	57	1,104	1,183		84	23	49	156		106	80	1,153	1,339	
	Non-Cit.....	391	320	139	850		1,575	6	1	1,582		1,966	326	140	2,432	
	Total.....	413	377	1,243	2,033	392	1,659	29	50	1,738	614	2,072	406	1,293	3,771	1,006
CHINESE	Cit.....	16	28	73	117		21	4	3	28		37	32	76	145	
	Non-Cit.....	13	11		24		25	1		26		38	12		50	
	Total.....	29	39	73	141	32	46	5	3	54	20	75	44	76	195	52
KOREAN	Cit.....	4	6	23	33		5	1		6		9	7	23	39	
	Non-Cit.....	7	7	2	16		11			11		18	7	2	27	
	Total.....	11	13	25	49	12	16	1		17	9	27	14	25	66	21
PUERTO RICAN	Cit.....	88	95	318	501		51	31	20	102		139	126	338	603	
	Non-Cit.....	1	1		2		2			2		3	1		4	
	Total.....	89	96	318	503	82	53	31	20	104	23	142	127	338	607	105
PORTUGUESE	Cit.....	447	452	925	1,824		185	131	76	392		632	583	1,001	2,216	
	Non-Cit.....	16	27		43		7	47		54		23	74		97	
	Total.....	463	479	925	1,867	402	192	178	76	446	101	655	657	1,001	2,313	503
HAWAIIAN	Cit.....	107	113	261	481		58	28	20	106		165	141	281	587	
	Non-Cit.....															
	Total.....	107	113	261	481	92	58	28	20	106	25	165	141	281	587	117
ANGLO-SAXON	Cit.....	145	135	131	411		36	44	1	81		181	179	132	492	
	Non-Cit.....	2	2		4							2	2		4	
	Total.....	147	137	131	415	138	36	44	1	81	26	183	181	132	496	164
ALL OTHERS	Cit.....	32	25	272	329		19	8	3	30		51	33	275	359	
	Non-Cit.....	6	7		13			3		3		6	10		16	
	Total.....	38	32	272	342	32	19	11	3	33	8	57	43	275	375	40
TOTAL OF MAUI	Cit.....	1,576	1,696	6,310	9,582		1,167	765	293	2,225		2,743	2,461	6,603	11,807	
	Non-Cit.....	1,351	1,286	141	2,778		1,838	270	1	2,169		3,189	1,556	142	4,887	
	Total.....	2,927	2,982	6,451	12,360	2,652	3,005	1,035	294	4,394	1,181	5,932	4,017	6,745	16,694	3,833

Admitted.

Mr. Crockett: We will call Mr. Cockett.

JOHN B. COCKETT

called as a witness by and in behalf of the Defendants, having been previously sworn, was examined and testified as follows: [293]

Direct Examination

By Mr. Crockett:

The witness, if the Court please, was on the stand this morning and has already been sworn. The record shows that he is Clerk of the Second Circuit Court of the Territory of Hawaii.

Judge Biggs: Very well.

Q. Mr. Cockett, did you, at the request of the defense, bring down the exhibits which were introduced in the proceedings had in the district court of Lanai entitled the Territory vs. Aglian?

A. Yes.

Q. Are these the exhibits?

A. These are the exhibits consisting of Exhibits A, B, C, D, E, F, and G.

Q. I see. Where have these exhibits been since they were transmitted to your court?

A. They have been in my custody at all times since the 8th day of August, 1947, at 1:18 p.m.

Mr. Crockett: If the Court please, at this time we ask that these exhibits be received in evidence.

Judge Biggs: Any objection?

Mrs. Bouslog: Your Honor, I have the same objections that have been reserved by the defendants up to now as to relevancy.

(Testimony of John B. Cockett.)

Judge Biggs: Very well, same ruling as made with [294] respect to the defendants; Defendants' Exhibits E-1 to E-5.

(Thereupon, the documents referred to were marked Defendants' Exhibits E-1 to E-5 inclusive and received in evidence.)

Q. Mr. Cockett, showing you these two envelopes marked Criminal 2412, Territory vs. Abraham Makekau, and also another envelope marked Criminal No. 2412, Territory vs. Abraham Makekau, do those envelopes contain the exhibits which were offered in the hearing before the Circuit Court upon the challenges of the grand jury; that is, offered in evidence by the prosecution?

A. Yes, they do.

Q. And I believe the exhibit numbers were A, B, C and D?

A. Yes, and the Court's Exhibits 1 and 2.

Mr. Crockett: I offer those in evidence.

Judge Biggs: Admitted subject to precisely the same ruling.

Mr. Crockett: These have been marked Plaintiffs' Exhibits 14 and 16 for identification.

Judge Biggs: Let them now be admitted subject to the usual ruling.

(Thereupon, the documents referred to were received in evidence as Plaintiffs' Exhibits Nos. 14 and 16.)

Q. Mr. Cockett, there was testimony adduced that certain persons listed as grand jurors whose

(Testimony of John B. Cockett.)

names had appeared for several consecutive years. As Clerk of the Court, do you know [295] how those names happened to appear consecutively?

A. Because they did not serve and the Court and the jury commissioners put them back on the list the following year. In those days our jury panel when drawn served the whole year, but the system has been changed so that the panel has been changed, that is, the working panel.

Q. In other words, during the years before there was a change, if a man did not serve on the jury panel his name remained on the list of 50?

A. That is correct.

Q. And when the jury commissioners met they only filled in to take places of those who had been called for actual service?

A. That is correct.

Q. You mentioned there was a change. Do you recall why that change was made?

A. I believe on account of an amendment to the law.

Mr. Crockett: If the Court please, the laws of the Territory shows that there was a change made in the session laws of 1945. I only have the 1947 session here, but it was 1945, Chapter 163, Series D 165, and if I might inform the Court what that change was, it was this, that any persons whose names were listed on the list of 50 could not again appear the following year, so they had to make an entirely new list of 50. That is all; cross-examine.

Mrs. Bouslog: No questions.

(Witness was excused.) [296]

Mr. Crockett: If the Court please, if it would be of service to the Court, I have a map of Lanai City, to give the Court an idea of the town, if counsel has no objection.

Mrs. Bouslog: No objection.

Judge Biggs: That will be admitted as Defendants' Exhibit F.

(Thereupon, the document referred to was marked Defendants' Exhibit "F" and was received in evidence.)

JACOB KALUA NAHINU

called as a witness by and in behalf of the Defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Q. What is your name?

A. Jacob Kalua Nahinu.

Q. Where are you living, Nahinu?

A. 1244 Fort Street.

Q. In the month of July, 1947, were you at Lanai City? A. That's right.

Q. And were you employed there?

A. Yes, sir.

Q. For whom were you employed?

A. Hawaiian Pineapple Company.

Q. What was the capacity in which you were employed? A. Truck driver. [297]

(Testimony of Jacob Kalua Nahinu.)

Q. Where were you living at that time?

A. Block 33, house 7.

Q. House number what? A. Seven.

Q. Showing you a picture which I have shown to counsel, is that a picture of the house where you were living? A. Yes, it looks like it.

Mr. Crockett: I offer this in evidence.

Judge Biggs: Any objection?

Mrs. Bouslog: No, your Honor, except as to relevancy, if the Court please.

Judge Biggs: Admitted with the usual reservation.

Mr. Crockett: I have several, if the Court please. As they are identified they may be put together.

Judge Biggs: Very well.

Q. Is that also a picture of the same house or the area where you were living? A. Yes.

Q. Showing you two additional views of apparently the house, were those different views of the same house?

A. Yes, I believe they are the same.

Mr. Crockett: That makes four, if the Court please. We offer them all in evidence together.

Judge Biggs: Let them be marked as G-1, 2, 3, 4.

(Thereupon, the document referred to were marked Defendants' Exhibits Nos. G-1 to G-4 inclusive in evidence.) [298]

Q. What was the nature of your work there?

A. We were hauling pineapples.

Q. Were you the driver or swamper?

(Testimony of Jacob Kalua Nahinu.)

A. Truck driver.

Q. Now do you recall on the morning of July the 15th making a report to the police department about some trouble you had had that morning?

A. Yes, I do.

Q. What time did the trouble occur?

A. About 5:30 in the morning.

Q. What was the nature of the trouble?

A. Well, I don't know. Apparently the boys were sore at us for taking down fruit to the wharf.

Q. What happened? What was the trouble?

A. Well, there was no trouble. They just pounced on me; that's all, and beat me up.

Q. Now what time in the morning did you say this occurred?

A. About 5:30 in the morning.

Q. Will you tell us in your own words from the time you got up just what happened?

A. When I got up and got ready to go to work, my brother, of course, was up ahead of me and he went out to clean up. When he came in he told me there were boys surrounding the house, because we knew what those guys were going to do.

Mr. Symonds: I object to the testimony of the witness [299] on the ground it is hearsay and calling for a conclusion of the witness.

Judge Biggs: There is some hearsay in it, but it is really a part of the incident. Objection overruled.

Q. Proceed.

(Testimony of Jacob Kalua Nahinu.)

A. He warned me that there were men outside. Well, I didn't know they were out there to grab me and beat me up.

Mr. Symonds: I object to that, your Honor.

Judge Biggs: Can't the witness just tell us what took place, please?

Q. Yes, proceed. Tell us what took place. Did you go outside?

A. I went outside because I had to go outside. The wash house was in the back of our house. I went out there with towel and soap. I washed my face in the tub there, and I toweled myself. At that moment the door of the bathroom was shut. I thought the wind blew the door to shut it, and I tried to get out but somebody was leaning on the door. Then I knew that somebody out there was trying to corner me in the wash house. Then the only thing I could do was to give him a good stiff shove and the door did give. The moment that door gave something struck me right here on my forehead (indicating). I just saw the hand and something hard, but I couldn't see the person. Well, at that moment I was kind of stunned. Later I found out that it was a rock.

Mr. Symonds: Just a minute; I object, your Honor. [300]

Judge Biggs: Why do you object, Mr. Symonds?

Mr. Symonds: He says later on, he says it was a rock.

Judge Biggs: All right, it is a part of the res

(Testimony of Jacob Kalua Nahinu.)

gestae. Let's get his story. It is a difficult story to get from the witness because he will not speak up clearly. Speak up clearly. You were hit and you were stunned. Then what happened? Just tell us what happened, not what you thought, but what happened.

A. Well, I got out of the door. Then this lot of men came up to me and started beating me up. What could I do? I couldn't do anything.

Q. Did you fall down?

A. I didn't fall down, but I don't know what kept me up on my two feet.

Q. About how many men were there, one or more than one? A. More than one, about 20 men.

Q. About 20 men. And when you say they were beating you, did they strike you?

A. They struck me and all kinds. I have a big cut. I could show you the mark. I got a scar from one of the cuts. .

Q. How long did that continue?

A. Oh, I believe about ten minutes.

Q. Did you identify any of the men there?

A. I did. [301]

Q. Can you give us the names of any of the persons that you did identify?

A. Well, the Hawaiian fellow was Makekau. The Filipino boys I know them only by sight.

Q. Any other boys you identified by name at that time?

A. I don't remember any Japanese, but I know there was a lot of Filipino boys.

(Testimony of Jacob Kalua Nahinu.)

Q. Can you give us the names of the Filipino boys?

A. One fellow, they call him "Big Boy." I don't know his right name, because I was only with him for about a week, see.

Q. Any others that you recall?

A. If I see them I could recognize them and point them out.

Q. Now did anybody come to your help or assistance while this was going on?

A. My brother tried to help me, but somebody else was trying to take care of him too.

Q. By "somebody else" you mean the boys?

A. There were a big group of them. Some came for me and some went for him.

Q. Did that occur in the same place?

A. In the same place at about the same time.

Q. Was your brother living in the same house with you?

A. That's right, living in the same room.

Q. You mentioned the washroom. Showing you this picture, which we will later identify, is that the washroom you mean?

A. The door should be over here on this side. This is another [302] door. It isn't this one, the one on the inside.

Q. This is the same building, but it was a different door that you went into? A. Yes.

Mr. Crockett: We will offer this, if the Court please.

(Testimony of Jacob Kalua Nahinu.)

Judge Biggs: Any objection?

Mr. Symonds: No, your Honor.

Judge Biggs: Why not put the other picture in at the same time and mark them as one?

Mr. Crockett: Yes, we will, if the Court please.

Q. What is this last picture that I have? This is the other end of the washroom?

A. Yes, that is the one I came in.

Q. That is the door you came in, the one where you were penned in? A. That's right.

Mr. Crockett: We will offer these in evidence.

Judge Biggs: Admitted, subject to the same ruling. Defendants' Exhibits H-1 and H-2.

(Thereupon the documents referred to were marked Defendants' Exhibits H-1 and H-2 and received in evidence.)

Q. You say this beating continued for about ten minutes. What happened after that?

Judge Biggs: I don't think the witness said that. Did he say ten minutes? [303]

Mr. Symonds: Yes, your Honor.

Mr. Crockett: Yes, your Honor.

A. Well, at the same time I was asking them to let me go, see, and gradually they walked away.

Q. Were you taken to the hospital that morning?

A. Yes.

Q. And before the doctor gave you attention, did he take a picture of you?

A. He took a picture of me right away.

Q. Showing you this picture, is this the picture the doctor took of you?

(Testimony of Jacob Kalua Nahinu.)

A. Yes, that is me all right.

Mr. Crockett: We offer this in evidence.

Judge Biggs: There is to be only one picture?

Mr. Crockett: I have one other.

Q. Later on did the police take a picture of you after you had been cleaned up? Well, to refresh your memory, is that also a picture of you?

A. Yes, that is me.

Q. When was that taken?

A. That was after the doctor applied the bandage on my wound.

Mr. Crockett: We offer the two of them in evidence, if the Court please.

Judge Biggs: This will be I-1 and I-2. Same ruling. They are admitted. [304]

(Thereupon, the documents referred to were marked Defendants' Exhibits I-1 and I-2 and received in evidence.)

Q. Did you report this incident to the police?

A. Yes, we did.

Q. And during the day did they question you?

A. The police did.

Q. And were there any persons brought before you for identification by the police?

A. Well, the men that we tried to point out and identify by name and sight.

Judge Biggs: I couldn't understand. What was your answer?

A. The men that we felt were responsible that we were asked to identify.

(Testimony of Jacob Kalua Nahinu.)

Q. (By Judge Biggs): Did you identify any of them? A. Yes.

Mr. Symonds: I object to that answer, what he felt.

Judge Biggs: He was asked whether or not he identified any and he says he did.

Q. (By Judge Biggs): What did you identify them as?

A. As some of the guys that beat me up.

Judge Biggs: Some of the guys that beat him up.

Mr. Crockett: Cross-examine.

Mrs. Bouslog: No cross-examination.

(The witness was excused.) [305]

Judge Biggs: In respect to the testimony given by this last witness, Mr. Crockett, what incident does that relate to? How many persons were charged as a result of that assault?

Mr. Crockett: This is a case where I believe there were six that were charged, or with Makekau there were five. They were charged also under riot and assault and battery.

Judge Biggs: They were also included in the conspiracy to commit assault and battery?

Miss Lewis: If the Court please, they have not been indicted. This is a police complaint.

Mrs. Bouslog: The complaint charges riot and unlawful assembly.

Mr. Crockett: Yes; there was no conspiracy.

Judge Biggs: Proceed.

SAMUEL KALUA,

called as a witness for the defendants, being duly sworn, testified as follows:

Direct Examination

By Mr. Crockett:

Q. What is your name, please?

A. Samuel Kalua.

Q. Was Jacob Kalua Nahinu your brother?

A. Yes.

Q. You have different names? [306]

A. Yes.

Q. Were you on Lanai with your brother during last year, July, 1947? A. Yes.

Q. Living in the same house with him?

A. Yes.

Q. You recall some trouble at the house where you were living on the morning of July 15th?

A. That's right.

Q. What time did that trouble happen that morning?

A. The trouble started at 5:30 in the morning, 5:30 a.m.

Q. And will you now relate to the Court just what you did, and what took place at that time?

A. As I came back from the bathroom, that is outside of the building, where we have our quarters, our sleeping quarters, entering through the bedroom of the apartment of our room, I noticed some U.P.'s—as you may know—in other words, union police, had their bands; that is how I recognized some of them. They were outside of the building, close to

(Testimony of Samuel Kalua.)

the main road, and I seen they walked around, and I did not bother it, I just walked into the room, and I told to my brother, Jacob, what I have seen outside, and so he told me, "Well, there is nothing to worry; nothing that we have done."——

Mr. Symonds: I object to anything further along this line. [307]

Judge Biggs: Well, we had from your witnesses, Mr. Symonds and Mrs. Bouslog, plenty of hearsay. Now I propose that we get along with this hearing, even if it involves some hearsay. The Court is quite able to distinguish hearsay from real evidence. It is not as if we had a jury, and at the same time I say to the witness: We are not interested in what somebody said to you, unless it be an actual part of the proceeding. Now just tell us what happened.

A. After I told him about these boys, he says not to worry.

Q. What happened to you?

A. Well, right after that this thing happened; he went out, and as he approached to the bathroom, to get washed up—the door, I see the door slam, bang! and from the outside, and the person that was holding that door, he had a U.P. band on his arm, his right arm, and since that door—my brother was trying to push the door open and he could not, and then finally he gave a big jerk and the door flew open, and as the door flew open somebody hit him right on the forehead, square on the forehead, and then I saw a bunch of them come up, and then —(witness demonstrates).

(Testimony of Samuel Kalua.)

Q. Well, how do you mean, with his fist?

A. With his fist, a rock in his fist, right in his fist, openly, like this (demonstrating), and cracked him right on the forehead, and you just can imagine what would happen.

Q. We are not interested in that. What we are interested in [308] is what took place. What did you see next?

A. The next thing I seen was a lot of the boys coming to attack my brother.

Q. Did they attack him? A. They did.

Q. What happened?

A. Then I ran out of the room. I could not stay in there. I ran out of the room and tried to go out and help my brother the best way I can, and then I was rushed also and by some of these boys, you call—some of these nice boys we have, and then I was attacked.

Q. What happened to you?

A. I was cornered and put into a corner where they tried to beat me up as they did my brother, and fortunately enough I could get away; I got away, I struggled with them, and a couple of boys they tried to hold my arms down, but I moved around and I got away from them.

Q. And when you got away did any of them follow you? A. Yes, that's right; they did.

Q. What happened after that?

A. A bunch of boys started to trail me as I ran alongside of the road, and one of them tripped me

(Testimony of Samuel Kalua.)

and I was knocked down, sliding head first right into a ditch, a seven-foot ditch, and I fell right into it.

Q. And what happened after that? [309]

A. When I looked over me I seen the boys standing over me with sand-bag in his arm—in his hand.

Q. Did he hit you? A. He did.

Q. And what happened after that?

A. And this person say: "Are you going to work?" and I said "No," and he said, "You better not, you dirty rat."

Q. Well, did you get out of the ditch, finally?

A. I did.

Q. How did you get out?

A. I crawled out of the ditch by myself.

Q. Where were these persons? Had they gone then, or were they still there?

A. They were standing by, moving along gradually, away from me.

Q. Were there any—that is, as a result of what they did to you did they leave any marks or make any open wounds or bruises or anything like that?

A. There is none of that sort on me. My body was all scratched up from the (indicating) on the body, from the beating they had given me, from the arm down here (indicating).

Q. Your body was sore, but no actual cuts or anything? A. No.

Q. How many people or persons did you see there at that time?

(Testimony of Samuel Kalua.)

A. There was quite a bit of them, 20 to 25.

Q. And how many of them did you identify?

A. Well, I identified a few of them; not very much; most of them were new boys whom I had not seen down there.

Q. Were you also questioned by the police?

A. That's right.

Q. About that matter? A. Yes.

Q. And were some of these men brought before you for identification by the police?

A. Yes, they were.

Q. Did you identify them? A. Yes.

Cross-Examination

By Mr. Symonds:

Q. When you say that you saw your brother go into the bathhouse, where were you?

A. Right in the bedroom.

Q. And is there a window which you can see over to the bathhouse? A. That's right.

Q. May I see that in the picture? Which is the picture of the bathhouse?

A. You haven't got the picture of the bathhouse yet. This is part of the bathhouse here (indicating) but there is nothing to show where the door of that is, it took place.

Mr. Symonds: The witness is referring to Defendants' [311] H-1.

Q. You say this is a picture of the bathhouse, but it does not show the particular door that your

(Testimony of Samuel Kalua.)

brother went through into the bathhouse, is that correct? A. That's right.

Q. Is there a picture of the house among this group, in which you were located, at the time?

A. That's right; not here. This is the one here (indicating).

Q. (By Judge Biggs): What is the exhibit?

Q. Referring to Defendants' Exhibit G-4, and he points to the house in the center of the picture.

Is that the house in which you were living?

A. I am pretty sure that is the one.

Q. Are you sure or not? A. Positive.

Q. You are positive that this is the house. What is the house number? A. House number 7.

Q. Is that a picture of the grounds of the house?

A. This right here is the main road.

Q. Where, in relation to the front of the house, is the bathroom?

A. Down here (indicating). It should be right here in this corner here (indicating).

Mr. Symonds: The witness is pointing to the left-hand [312] corner of the picture.

Q. And how far from the left-hand corner of the picture, or the bathhouse, is the house located?

A. Not more than ten feet.

Q. About ten feet. Now you say there are windows in the back of the house? A. Yes.

Q. How many rooms are there in the back of the house?

A. Rooms? There is only one room, and to me,

(Testimony of Samuel Kalua.)

according to the rooms, there is three rooms in that building.

Q. Is the bedroom in the back of the house?

A. My bedroom, yes.

Q. Why is it you did not go over to the bathhouse with your brother?

A. I already came back from the bathhouse.

Q. Did you see anybody outside when you came back?

A. Yes.

Q. Did you see people while you were outside, or after you came in?

A. When I came in.

Q. You saw nobody when you were over in the bathhouse?

A. Yes.

Q. You saw nobody when you were returning from the bathhouse?

A. Coming in, yes.

Q. You did see someone? [313]

A. Yes, coming—that's right, I did.

Q. Now at the time you were in the bathhouse who else was in there, if anyone?

A. None that I remember.

Q. Nobody?

A. There was somebody in there which I don't know.

Q. Do other people use that bathhouse?

A. Oh, that is quite a bit more than 200 that use the place.

Q. And at 5:30 in the morning there was a large number of men who go to the bathhouse, is that correct?

A. Yes.

Q. Isn't that the time for getting up to go to work on the island?

A. That is about right.

(Testimony of Samuel Kalua.)

Q. And you say you saw nobody in the bathhouse at the time you were there?

A. I did not say I saw nobody. There was somebody in there.

Q. Was or was there not somebody in the bathhouse at the time you got there?

A. Yes, there was.

Q. How many people were there?

A. No idea.

Q. Can you estimate? A. I don't know.

Q. Was it one or was it fifty? [314]

A. There is a large number. How many, I don't know.

Q. You are not able to estimate? A. No.

Q. Now when you left did you see some men outside—is that correct?

A. Outside my building, yes.

Q. How many would you estimate were outside of the building?

A. There was quite a number of them there; about five.

Q. Now then you went into the house?

A. That's right.

Q. And you looked out of the window, and tu—— A. Turned the radio on first.

Q. You turned the radio on first?

A. Yes, at 5:30.

Q. And you looked out of the window?

A. Naturally, the window is right there.

Q. Well, did you look out of the window?

(Testimony of Samuel Kalua.)

A. I did.

Q. Did you see any men outside of the window?

A. Outside of the window?

Q. Yes. A. No.

Q. Well, from looking out the window could you see anybody? A. No, I could not see.

Q. Looking out the window could you see any men outside? [315]

A. I could not see at first.

Q. When did you see some men outside?

A. After my brother left the room to enter the bathhouse I was sitting right on the couch facing to the bathroom, and I seen him enter and seen this door, and the first thing I knew about the attack, I glanced back again and there was this person holding the door.

Q. You were looking out the window at that time, is that correct? A. Yes.

Q. You were in the house?

A. That's right.

Q. And you saw somebody standing with their hand on the bathroom door?

A. After it was slammed shut, yes.

Q. How many people did you see standing there?

A. One at that particular moment.

Q. Just one?

A. Just one at that particular moment.

A. And then what happened?

A. Then I seen the door—my brother was trying to push the door open, and after the door flew

(Testimony of Samuel Kalua.)

open this person that was holding the door hit my brother on the forehead, and then I seen these police coming.

Q. Which hand did he hit him with? [316]

A. His right hand.

Q. Did he have his fist closed?

A. Like this. (Demonstrating).

Q. And you could see from the room whether the person who hit your brother had his fist open or closed, is that correct?

A. I could see plainly.

Q. You could see plainly? A. That's right.

Q. He hit him with his right hand?

A. That's right.

Q. And the first was closed?

A. It was not closed; open this way, partly closed (demonstrating); you could see something sticking out here (indicating); that is a rock.

Q. You saw something sticking out of his hand?

A. That's right.

Q. It could have been a stick? A. No.

Q. A piece of iron? A. No.

Q. You said you saw something?

A. It could not be a stick; it could not be an iron.

Q. It could have been a small piece of iron?

A. No.

Q. How are you positive you saw this man with a rock in his [317] hand?

A. You grab something bigger than your fist and how would you hold it?

(Testimony of Samuel Kalua.)

Q. That is your explanation that it was a rock, is that correct? A. It was a rock, yes.

Q. You said he grabbed something the size of your fist? A. He grabbed something.

Q. You saw something in his hand the size of his fist? A. A stone.

Q. How do you know it was a stone?

A. I am pretty sure it was a stone.

Q. You are sure, are you? A. Positive.

Q. You are sure what it was? Are you sure it was a stone? A. A stone.

Q. (By Judge Biggs): He said now, "Are you sure it was a stone?" A. It was a stone, yes.

Q. What color was it?

A. The red dirt, or color of the dirt over there in Lanai.

Q. And your testimony is that you are positive that it was a stone?

A. It is a stone, positively.

Q. Could it have been a clod of red dirt, hard red dirt?

A. Would that give him a cut over his eye?

Q. Then what happened after you saw this person strike your brother over the eye?

A. As I said, I seen a bunch of boys coming to him.

Q. Where did these boys come from, which direction?

A. They came from my left-hand direction, from the direction of the bathroom.

(Testimony of Samuel Kalua.)

Q. Then what happened?

A. Then I left my room to go out and aid my brother.

Q. Did you go all the way over to the bathroom?

A. Close to it, but I didn't get to him.

Q. And then what happened?

A. Then this bunch broke up; some went to my brother, and some attacked me.

Q. You were pretty busy, were you not? When they attacked you, what did you do?

A. When they attacked me I tried to defend myself? A. Say about 20 or 25.

I can to my brother.

Q. From then on you did not see what happened to your brother? A. I could see, yes.

Q. In other words, you could see what was happening to your brother, and at the same time you were attempting to beat off these other men, is that correct?

A. I was trying to go through this bunch that was trying to attack me. [319]

Q. How many people where there altogether outside the bathhouse at that time that you say the fighting was going on with your brother and yourself? A. Say about 20 or 25.

Q. You were able to estimate that, is that right?

A. That's right.

Judge Biggs: Anything by way of redirect?

Mr. Crockett: Nothing.

(Testimony of Samuel Kalua.)

Examination by Judge Metzger:

Q. Was there a light out in the yard?

A. Yes, it was quite light.

Q. Electric light?

A. No, it was bright daylight, almost.

Q. I was wondering when and where you identified these men that were there?

A. Well, I knew some of them, that I used to work with them.

Q. When and where? Where were they when you identified them? A. At the police station.

Q. How long afterwards?

A. Well, I cannot say, but soon afterwards.

Q. How many did you identify?

A. I identified all of them that had anything to do.

Q. How many did the police bring in?

A. They brought in about seven of them. [320]

Q. For identification? A. Yes.

Q. And you identified all of them?

A. Well, I identified those that were present at the time I was attacked over there; there was about five of them.

Q. Five out of seven? A. Yes.

Q. And two you did not identify?

A. Two I was not positive of.

Judge Biggs: Anything further?

Mr. Crockett: Nothing, if the Court please.

(Witness excused.)

Mr. Crockett: Our next witness will take quite

a bit of time, because I intend to show the Paia incident.

Judge Biggs: How long a time do you estimate?

Mr. Crockett: Well, I imagine about an hour at least.

Judge Biggs: How many witnesses do you have?

(Discussion relating to witnesses who are coming from Maui and other witnesses counsel expects to call, and as to the time counsel will be prepared to go ahead with the case.)

Judge Biggs: The Court will stand adjourned until 9:30.

(Whereupon an adjournment was taken until 9:30 o'clock a.m. on Monday, April 26, 1948.)

Monday, April 26, 1948

Mr. Crockett: We are ready to proceed, if your Honor please.

Judge Biggs: You may proceed, Mr. Crockett.

Mr. Crockett: If the Court please, there has been introduced in evidence some moving pictures, and since they cannot be shown perhaps just at the time the witness testifies, counsel says she has no objections to having the pictures shown now, prior to calling Mr. Freitas, so that the Court would have an idea of the scene and the locality where all of this occurred.

Judge Biggs: Very well.

Mr. Crockett: May the court-room be prepared?

Judge Biggs: Yes.

Mr. Crockett: Before we do that, if the Court

please, I would like to offer in evidence three maps which we have been able to secure, the first map showing the Hawaiian archipelago, all of the islands as a group.

Judge Biggs: May I see it?

Mr. Crockett: The second will show the Island of Maui and the third will show the Island of Lanai and help establish the fact that Kaumalapau Harbor is on the sea coast.

Judge Biggs: Any objection? Let them be marked as one exhibit. I forget the letter. [322]

The Clerk: Exhibit J-1, 2, and 3.

Judge Biggs: Exhibits J-1, 2, and 3.

Mrs. Bouslog: Your Honors.

Judge Biggs: Yes.

Mrs. Bouslog: There are a number of objections in the record and out of the record to a portion of these films which were not taken during the time of the incident happening, but in view of the fact that there isn't any jury present I think your Honors will be able to tell from the pictures themselves that many of them do not bear directly upon the incident itself.

Judge Biggs: Very well. Or if you desire, it may be of aid to the Court if you would file a memorandum respecting those portions which you conceive were not taken during the course of the incidents.

Mrs. Bouslog: Yes. Your Honors will recall at the close of my case I asked permission to show certain films.

Judge Biggs: Yes.

Mrs. Bouslog: Which have to do with the locale of the Kaholakula incident. I want to state that at the time of bringing the matter to the attention of the Court and asking for permission to show it I had not for almost a year had an opportunity to examine the films. I think I may have left the impression with the Court that there are some scenes upon the day of the 16th of October. I am informed by the people who were present that they were all taken at the immediate locality but there are no scenes of the actual incident, but they do [323] show the same place and the same kind and character of picketing that was going on on that particular day.

Judge Biggs: They are received subject to the same motion. You have no objection to their being shown at the same time, I suppose?

Mr. Crockett: No objection.

Judge Biggs: By the same operator?

Mrs. Bouslog: They can be shown by the same operator. They are 8 mm films, your Honor.

Judge Biggs: Very well. Let's get the motion pictures, all of them, out of the way.

Miss Lewis: Do I understand Mrs. Bouslog will put on a witness who will testify that this is the same kind of what Mrs. Bouslog calls "picketing" that was going on at the time we are testifying about, or what is the offer? I don't understand it.

Judge Biggs: I think she proposes to show scenes of peaceful picketing. Isn't that it? You will have to identify the films by some witness.

Mrs. Bouslog: I think Mr. Crockett after he sees the film will stipulate they were taken in Paia. The person who took the pictures is not here, but there is a person present who was present at all times when the pictures were taken.

Judge Biggs: I think they should be identified for the record, unless they be stipulated. [324]

Mr. Crockett: I have never seen the pictures.

Judge Biggs: We will see what they are. We have no jury, so we can allow a wide latitude.

Miss Lewis: I don't want the record to be full of objections. Mrs. Bouslog spoke of the time of the picket lines were closed. I am sure the Court understands that matter.

Judge Biggs: Certainly. By stipulation.

Miss Lewis: It is not stipulated by us that any such thing occurred.

Judge Biggs: Let's see what the pictures are. It is pretty hard to pass on pictures until you see them. I think we all understand the nature of your objection.

It is going to be very hot in here, I am afraid. I don't think it need to be quite in that position; it is supposed to be a showing in open court, so that the public are entitled to see it also. There is no reason why the spectators shouldn't come within the bar of the Court.

Mrs. Bouslog: Before the pictures start I would like to have the operator advise the Court and counsel whether or not the pictures are being run at the same speed at which they were taken. I believe one

of the cameras was set at 32 frames per minute. I don't know whether the record shows the speed at which the other pictures were taken.

Judge Biggs: If the operator is to answer the question, I should think he should be sworn. You have no objection to that course? [325]

Mr. Crockett: No.

Judge Biggs: Swear the operator, please.

LEONARD R. SCHWEITZERHOFF,

a witness called by and on behalf of the plaintiffs, being first sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Do you know whether or not your machine will be set at the speed that the pictures themselves were taken?

A. I have adjustments on the machine and I can run it at any speed you want; even stop it if necessary.

Mrs. Bouslog: I don't know. Mr. Crockett, do you know the speed at which the three films were taken? I know one film was taken at 32 frames per minute; I don't know about the others.

Judge Biggs: Mrs. Bouslog, isn't your question rather empirical? I suppose all of us have seen thousands of feet of motion picture film, and we can probably tell from our own experience; the

(Testimony of Leonard R. Schweitzerhoff.)

Court probably can tell from its own experience whether the pictures are being run slower or faster—slow or fast. We are all familiar with human movements.

Mrs. Bouslog: Of course, it depends on how fast——

Judge Biggs: I realize that. I have had many of them in court-rooms heretofore; I think all the judges have. I have sat in a great many patent cases. I think even if the witness [326] cannot answer the question we will be able to determine the speed.

The Witness: Does it make any difference which is shown first?

Judge Metzger: I don't know anything about it.

Mr. Crockett: If the Court please, for the purpose of the record, I think all of those films are marked. I would like to ask the operator, as he shows them to give the exhibit number as shown on the case. That number applies to the number which was given in the court below, and later we can have them marked with an appropriate number for this Court.

Judge Biggs: Will you state what the label is?

The Clerk: Defendants' Exhibit E-1.

The Witness: Yes. Defendants' Exhibit E-1.

Judge Biggs: The same ruling, as to relevancy. Admitted, subject to the same ruling as to relevancy.

Mrs. Bouslog: I think that is an error. The defendant didn't put any films in court.

(Testimony of Leonard R. Schweitzerhoff.)

Judge Biggs: I cannot hear you.

Mrs. Bouslog: I say, I think that is an error. The defendants below did not put any films in evidence.

Judge Biggs: The record will show; the record will show.

Would you say, Mr. Operator, that is normal speed?

The Witness: Yes, at the present time it is. You can slow it down or increase it. [327]

Judge Biggs: It seems to me that is about right; it seems so. Do counsel agree as to that?

Mr. Crockett: We do, yes, sir.

Judge Biggs: Both of you. Mrs. Bouslog, do you?

Mrs. Bouslog: Yes, sir.

Judge Biggs: Judge Metzger thinks it should be just a little faster, and so do I.

What is the reason for the blank, Mr. Operator?

The Witness: The film was not exposed.

Judge Biggs: I see.

The Witness: That is the end of that film.

Q. (By Mrs. Bouslog): Mr. Operator, are there any spaces on that particular film?

A. Just on the first feet of the lead.

Q. In other words, the first is not the film?

A. No, that is only spliced, an additional lead which was spliced on.

Judge Biggs: An additional lead is spliced on for the purpose of showing it.

(Testimony of Leonard R. Schweitzerhoff.)

The Witness: Yes, your Honor. The next is Defendant's X-4.

The Clerk: E-4, isn't it?

The Witness: E-4, yes.

Judge Biggs: Mr. Thompson, that should have its number as part of the same exhibit.

The Clerk: Yes; it is in one series. [328]

Judge Biggs: Yes. Thank you.

Miss Lewis: If the Court please, to tie in with the transcript from the district magistrate's court, it would be helpful if we could establish what the number was in that court. As well as the number Mr. Thompson—the roll which was just shown in this court was what?

The Clerk: Defendants' Exhibit E-1.

Judge Biggs: What was that marked in the district magistrate's court?

The Clerk: It is not marked here. There is some pencil writing.

Judge Biggs: What is the pencil writing?

The Clerk: "Exhibit C."

Judge Biggs: Pass it over to Miss Lewis. Can you tell, Mr. Crockett and Miss Lewis?

Mr. Crockett: Pardon me. I see it is marked by the clerk, that the mark which was put on the front, which we referred to as Defendants' Exhibit E-1, was the mark given by the clerk of this Court.

Judge Biggs: Yes; that is correct.

Mr. Crockett: On the other side of the film there appears in pencil marking "Exhibit C. 7/28/47.

(Testimony of Leonard R. Schweitzerhoff.)

Lanai district court. Exhibit C." That will connect it up.

Judge Biggs: That will clear it up.

Miss Lewis: Stamped with "E-4" marked in this court; [329] what was that in the Lanai court?

The Clerk: It is typed out "Exhibit F." That is the only identification.

Mrs. Bouslog: Mr. Crockett, for my information, can you state whether this was Mr. De Mello's film?

Mr. Crockett: The one that was just shown I believe was taken by a man by the name of Mr. Bilson.

Judge Biggs: Bilson?

Mr. Crockett: As it is marked on the case, if the Court please.

Miss Lewis: That all appears in the transcript in evidence here.

(The showing of another film was commenced.)

The Witness: That was one splice.

Judge Biggs: What is that, a bathing beauty? I think you are now a little bit on the slow side.

The Witness: It is not exposed now.

Judge Biggs: This film was not exposed in part, is that correct?

The Witness: Yes, your Honor.

That is all of that, your Honor.

Judge Biggs: Mrs. Bouslog, is your operator here?

(Testimony of Leonard R. Schweitzerhoff.)

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: Ready to proceed when this showing is over?

The Witness: The next, I think, is Exhibit A-E-B. [330]

The Clerk: E-3.

The Witness: E-3. "Lanai City incident" on the cover, "7/14/47," is the date, 4:30 p.m. "Taken by Lieutenant De Mello."

Judge Biggs: The number here, please, Mr. Thompson?

The Clerk: Defendants' Exhibit E-3.

Mr. Crockett: Did he say what was there in district court?

Judge Biggs: Yes.

Mr. Crockett: I am sorry.

The Witness: "Lanai City incident."

Judge Biggs: Give us the number.

The Clerk: Exhibit A.

Miss Lewis: Exhibit A in the district court.

The Witness: A splice. A splice. The end.

Judge Biggs: Isn't there one very small film?

The Witness: Yes, your Honor, there is. It has to be put onto a reel before it can be run.

The next is Exhibit 2.

The Clerk: Defendants' Exhibit E-2.

The Witness: Defendants' Exhibit E-2.

Miss Lewis: Did you say E-2, Mr. Clerk?

The Clerk: Yes, that is correct. E-2.

Miss Lewis: That is a small roll, not on a reel.

(Testimony of Leonard R. Schweitzerhoff.)

The Witness: Yes.

(The showing of the film was commenced.)

The Witness: That is all.

Judge Biggs: Can you proceed now, Mrs. Bouslog?

The Witness: Do you mind if I leave this on the reel for you?

Mr. Crockett: Mrs. Bouslog, do you object to this being left on the reel? It was simply a small roll, not on a reel, as it came from the clerk.

Judge Biggs: Do you have any objection to it being left on the reel, Mrs. Bouslog?

Mrs. Bouslog: No, your Honor.

Judge Biggs: Let the record show, then, that it has been taken from the roll to the reel by the operator and will remain on the reel; and it should be marked, Mr. Thompson. Keep the original container, of course. Thank you very much.

Mrs. Bouslog: Your Honor, I will put a witness on after the films are shown to explain the times and places they were taken. I want to state that we will stop showing the pictures—these are spliced pictures; they were made up to show parts of the strike—we will stop showing them when the clear—when the color films cease, because then the entertainment committee on the picket line takes over with a hula dance.

Judge Biggs: It might add greatly to the edification of the Supreme Court if an appeal were taken by the losing party.

(Testimony of Leonard R. Schweitzerhoff.)

(The showing of the film was commenced.)

Judge Biggs: It is pretty clear. [332]

Mrs. Bouslog: They are very clear pictures, your Honor.

The Operator: You will notice we let workers go through the line. That is an incident.

Judge Biggs: Don't testify. You will just show the pictures here now.

Mrs. Bouslog, this is the commencement——

Mrs. Bouslog: I think we can stop it now.

Judge Biggs: No, there is a little bit more.

Mrs. Bouslog: This is the parade of the strikers. If you wish to wait until we get through with the color film——

Miss Lewis: Are you putting the whole film in, Mrs. Bouslog?

Mrs. Bouslog: No. That is all, your Honor.

Judge Biggs: Very well. That concludes the portion you desire to show, Mrs. Bouslog?

Mrs. Bouslog: Yes, your Honor.

The Court: All right. The Court will stand in recess for about five minutes.

Miss Lewis: I think the record should show at what point the exhibit stops, at the end of the parade.

Mrs. Bouslog: At the end of the color film.

Judge Biggs: A little past the color film.

Mrs. Bouslog: Yes; there was one frame or so past the color film.

(Witness excused.)

Judge Biggs: Very well; the Court will stand in recess for five minutes. [333]

(A short recess was taken at 10:45 a.m.)

Judge Biggs: Are you ready to proceed, Mr. Crockett?

Mr. Crockett: Yes, if the Court please. Before calling the witness, if the Court please, I would like to have the record identify the small roll of film which was shown to the Court and which has been marked by the clerk of this Court as Defendants' Exhibit E-2. This roll of film, if the Court please, was originally a part of the roll which is now marked in this Court as Defendants' Exhibit E-3, and it is referred to in the transcript, which has been stipulated to be an exhibit in this court, the transcript of the evidence which was taken in the matter of the Territory v. Agliam, and referred to particularly on pages 13, 14, and 17—14 to 17, inclusive. It was separated from the original roll, taken by the same person but separated from the original roll because it portrayed incidents that occurred or it was taken prior to the incident which actually occurred at the time the defendants were arrested.

Judge Biggs: Is there any reason why these films, all of these films, those of the Attorney General as well as those of the plaintiffs, should not be stipulated into evidence, subject to a motion, subject to any question as to relevancy, and, of course, subject to our ruling respecting the motion to strike?

Mr. Crockett: I believe they have been already, if [334] the Court please.

Mrs. Bouslog: We have none.

Judge Biggs: They have not been.

Mrs. Bouslog: It is all right with us, your Honor.

Mr. Crockett: That is true as to our film, because the transcript shows the time and place and who took them. But as to their films, I do not believe we have had the time or place identified in the record.

Judge Biggs: It is quite true they have not, but very obviously the scenes occurred during the course of this strike. Can you go so far as to stipulate that they are pictures taken during the course of the strike?

Mr. Crockett: We will so stipulate. I have never seen the pictures before, but I am sufficiently familiar with the locality there and the things that occurred that I recognize them as pictures taken during the course of the strike, but prior to the incident referred to by counsel. I believe one picture was taken just the day before.

Mrs. Bouslog: They go through the period September, through the first part of October, the exact date on which they stop I do not know.

Judge Biggs: Then it is stipulated by both sides that all the films are introduced and may be marked in evidence as exhibits, received and considered by the Court, subject to any question as to relevancy?

Mrs. Bouslog: Yes, your Honor

Judge Biggs: And subject to a motion to strike.

Mrs. Bouslog: Yes, your Honor I believe the arrangement was made with Mr. Crockett or the clerk of the circuit court, Second Circuit Court, on Maui, that there would have to be reproductions made of these films.

Judge Biggs: Yes. Let's get the stipulation of record. You so stipulate?

Mrs. Bouslog: Yes.

Judge Biggs: Do you so stipulate, Mr. Crockett?

Mr. Crockett: We so stipulate.

Judge Biggs: Very well. The Court receives these exhibits, with the express understanding that copies will be substituted therefor, since they are exhibits already in evidence in a Territorial court.

Mr. Crockett: Shall we proceed, your Honor?

Judge Biggs: Yes.

ANDREW S. FREITAS

a witness called by and on behalf of the defendants, being first sworn, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Q. What is your name?

A. Andrew S. Freitas.

Q. What is your occupation, Mr. Freitas? [336]

A. Assistant chief of police, County of Maui.

Q. You reside within the County of Maui?

(Testimony of Andrew S. Freitas.)

A. Yes, sir.

Q. Where? A. Kihei, Maui.

Q. Do you have your commission as such officer with you?

Judge Biggs: It is conceded, is it not?

Mrs. Bouslog: Yes, your Honor.

Mr. Crockett: If the Court please, I have Mr. Freitas' commission and also a photostat copy, which I would like to offer in evidence.

Judge Biggs: Let it be marked.

The Clerk: Defendants' Exhibit K.

Mr. Crockett: This is the original.

Judge Biggs: Substitute a photostat therefor. A photostat is substituted, without objection.

(The document referred to was marked Defendants' Exhibit K, for identification, and received in evidence.)

Q. (By Mr. Crockett): Your commission recites you were appointed in 1943. And have you served as such, as assistant chief of police, continuously since that time? A. Yes, sir.

Q. And particularly during the years 1946 and 1947? A. Yes, sir.

Q. Now, Mr. Freitas, were you present in court and did you [337] see the pictures which were exhibited with reference to an incident that occurred at Kaumalapau wharf on the Island of Lanai?

A. Yes, sir.

Q. Were you present on Lanai during the month of July, 1947? A. Yes.

(Testimony of Andrew S. Freitas.)

Q. Were you present at the incident which occurred at that time? A. Yes.

Q. That is, at Kaumalapau? A. Yes.

Q. While the scene is fresh in the minds of the Court, will you tell us about what time did you go down to the wharf?

A. I went to the wharf at 3:05 p.m.

Q. How did you happen to go to the wharf at that time?

A. Trucks had been delivering these pineapples down there to the pier and I was informed that a barge was arriving from Honolulu to take pineapples.

Q. Who accompanied you down to the wharf?

A. I had Captain Seabury, Officer Takehoma, and Officer Medeiros with me.

Q. Were there any other officers there that arrived there before or after you did?

A. Several minutes later three others arrived.

Q. How many police officers were there altogether? A. Six, including myself. [338]

Q. How large a force is normally located on the Island of Lanai?

A. It consists of one district commander and three patrolmen.

Q. Then how many officers with you were from the Island of Maui?

A. There were four from the Island of Maui with me and two from the Island of Lanai.

Q. That is, down on the wharf?

(Testimony of Andrew S. Freitas.)

A. Yes, sir.

Q. The record shows there was a strike in progress at that period of time. When you arrived at the wharf did you see any persons who were then on strike or apparently on strike? A. I did.

Q. About how many would you say were present at about the time when you arrived?

A. When I first arrived there were just about 15 or 16 men there.

Q. Were you acquainted with any persons who were employed by the company but not on strike? Did you notice any of those persons down at the wharf at that time? A. Yes.

Q. These men who were on strike there, what were they doing down at the wharf?

A. They were sitting on the stone wall there.

Q. Were any of them engaged in picketing of any nature? [339]

A. There was no picketing when I first arrived there.

Q. Showing you pictures which have been offered in evidence as Defendants' Exhibits C-1, C-2, and C-3, showing the stone wall, I will ask you to explain those to the Court, if that is the stone wall you are referring to and where those men were sitting when you saw them.

A. Yes, this is the stone wall.

Judge Biggs: What is the number on the back of that?

A. This is Defendants' Exhibit C-1.

(Testimony of Andrew S. Freitas.)

Judge Biggs: Thank you.

Q. (By Mr. Crockett): What does that picture, Exhibit C-1, portray, Mr. Freitas? Would you explain that for the information of the Court?

A. That is the dock at Kaumalapau; that is looking out to the ocean from Lanai City.

Q. And is that as you approach the wharf or is that as you approach Lanai City?

A. That is as you approach the wharf from the direction of Lanai City.

Q. At about what portion of that stone wall were these men sitting at that time, when you arrived?

A. They were mostly down at the makai end.

Q. Now would you, that is, without questioning, Mr. Freitas, give us your own version of what happened. Tell your story consecutively, without interruption by me, and perhaps the [340] Court will get a clearer view.

A. About 3:30 the majority of these union men started to arrive in vehicles, some arrived in trucks, and they got off there and immediately after getting off they formed a picket line. They picketed about fifteen minutes and then asked me for permission to sit on the wall. So I told them it was perfectly all right with me. So they sat on the wall until the barge was secured. The barge was secured, by my watch, at 4:05 p.m. They got up and started to picketing. Then the supervisors started to mount the pineapple bins there. Three of them remained on the platform and two got on top of the bins, and the crane operator got onto the crane. And just as

(Testimony of Andrew S. Freitas.)

soon as he operated the crane and got it over the bin and these two supervisors were on top of the bin, trying to hook on this stretcher, that is when all these men broke loose. They started to yelling and rushing across. I yelled to them to stop; I yelled about half a dozen times, told them to go back, they would only get into trouble. I tried to stop them. You couldn't. They ran, ran around there. The place is so open there was nothing we could do. We were absolutely helpless. They refused to go on back.

Mrs. Bouslog: May I ask the Court to instruct the witness not to make or state his conclusions, but just what he saw and heard at the time.

Judge Biggs: Just tell what you saw and did, not your conclusions, Mr. Freitas. [341]

A. I saw these men, from eight to ten, mount the bins and I could see them over there just keep punching; they were just punching away over there. At that time I couldn't see any individual, but as they started to punch I saw one of the supervisors—Johnson—jump off the bin. When he jumped off the bin I looked in the direction of the crane and I saw the crane operator dismounting the crane, and Maile, one of the union men there, in the crane house. As the crane operator jumped onto the ramp there he ran towards my direction and about 15 or 20 men chased him. As he got near me he cut across and went to the end of the wall, and they just chased him, and they started punching him, and he was trying to protect himself, and when I kept

(Testimony of Andrew S. Freitas.)

yelling at him to come back here, but he got down to the dock area, where the small boat ties up, and as he got down there, there were several men, about six or seven, who started to punch him, and he got to the edge of the water, when he fell into the water. As he was in the water, men on the upper part of the pier started throwing pineapples at him. I noticed him go down once and then he came right up again, and he started to swim to the launch.

In looking back to the bins, there were a few more men on top of them, but the other supervisors were on the barge. So I told Diego Barbosa, who seemed to be the leader of them, to call his men back, that I would stop the work, nobody would work. There was no use of them carrying on any further. So he started to call the men back, and they went back to the wall [342] where they started to sit on the wall and on the street.

Q. What happened after that? They all went back and sat on the wall? A. That is right.

Q. That covers the incident in general?

A. Yes, sir.

Q. Now, going back now to one of the things you mentioned at the beginning. You said at 3:30 they formed a picket line and then started to picket? A. Yes.

Q. Will you tell the Court what was the nature of the picket line that they had there? That is, about how many men were in the picket line, the intervals which might have been between the men, and whether they were moving or not moving?

(Testimony of Andrew S. Freitas.)

A. I would say in the neighborhood—I first counted them when they arrived there. I counted up to 126 and then they continued coming, and I was trying to observe things, but they kept coming. But I would estimate the amount of men there was in the neighborhood of 300.

Q. Were all of those 300 in the picket line or were some of them sitting on the wall?

A. There was about—a little over 200 in the picket line and a good 25 or 30 still sitting on the wall.

Q. Did this picket line move or was it standing?

A. Yes, they moved. Where they were picketing, they were very loose. What I mean, *there* were about three to five, sometimes [343] seven feet apart.

Q. In which direction were they moving; that is, straight or back and forth or around in a circle?

A. They had two columns and they were sort of going around in a circle there.

Q. Referring to the map of Kaumalapau Harbor, which the record shows to be Defendants' Exhibit B, could you just point out, roughly, on there where this picket line was moving, so the Court could see that?

A. They were moving from the ocean side, *ma-kai* to *mauka*.

Q. The ocean on the map is the seawall?

A. The seawall, yes.

Q. (By Judge Biggs): The lower left-hand side of the picture? A. That is right.

(Testimony of Andrew S. Freitas.)

Q. Or map.

Mr. Crockett: For the benefit of the Court, makai means on the sea side.

Judge Biggs: Yes. We have had that explained to us.

Q. (By Mr. Crockett): You say they were moving makai to mauka. Were they coming back at all; were they circular?

A. They were circular.

Q. The map shows a line which says "Painted line." Did you notice that painted line, whether it was marked or how it was marked?

A. It was marked "Company Property."

Q. (By Judge Biggs): That is to say, it was a boundary [344] line of the company property?

A. Yes, sir.

Q. (By Judge Metzger): When was it marked?

A. That I don't know, sir. It was marked when I arrived there.

Q. Was it freshly painted?

A. Yes, it had been freshly painted.

Q. (By Mr. Crockett): Does that line appear on any of those pictures? A. Yes.

Q. Which picture?

Judge Biggs: Refer to the exhibit number, please. Which exhibit is it?

Judge Metzger: Exhibit E-5.

Judge Biggs: Kapu is the Hawaiian word for forbidden, is it not?

Mr. Crockett: Yes, if the Court please.

(Testimony of Andrew S. Freitas.)

Judge Biggs: No Trespassing.

Will you speak so the reporter can hear you, please?

A. It is around to the left. The center line here indicates the center portion of the street. But this line to the left, where you see the sign here, indicates the line we are speaking of.

Q. (By Judge Biggs): I think you have another exhibit in your hand. [345]

A. C-1.

Q. (By Judge Metzger): It is on this one, isn't it? A. Yes, sir.

Judge Metzger: C-2.

Judge Biggs: Yes.

Q. (By Mr. Crockett): How long did that type and form of picketing continue, Mr. Freitas?

A. I would say at the most about eight to ten minutes.

Q. And at the end of that time, what happened then?

A. They just broke ranks and just charged.

Q. Was any person acting as a kind of leader or supervisor or in charge of this line?

A. Yes, sir.

Q. Who was that?

A. They had five men in the front of this picket line and they had arm bands which they had on—UP; they informed me that they were union police. There was one individual—Diego Barbosa—was the spokesman for them.

(Testimony of Andrew S. Freitas.)

Q. Is Diego Barbosa one of the persons who was arrested and charged in the case of Territory of Hawaii v. Diego Barbosa? A. Yes, sir.

Q. You mentioned that they suddenly broke loose and rushed across this line. Did anybody give any signal or appear to give any signal when that was done? A. Yes, sir. [346]

Q. Who gave the signal?

A. Diego Barbosa.

Q. Could you show or tell the Court what kind of signal he gave?

A. He gave it this way, with his hand (indicating) three times.

Judge Biggs: That will not appear in the record. Suppose you describe it.

Mr. Crockett: The record shows that the witness stretched out his arm, slightly above the position of the level of the shoulder, with fist closed, and waves from the back towards the forward position three times.

Q. (By Mr. Crockett): And at the time he gave the signal, did you hear him say or make any noise of any kind?

A. Yes. At the same time he was yelling, but I couldn't make out what he was saying.

Q. Could you illustrate how he yelled?

Judge Biggs: Did he yell loudly?

A. Yes, he yelled very loudly, but as I say, I didn't get what he was saying.

Q. (By Mr. Crockett): Did it sound like he

(Testimony of Andrew S. Freitas.)

was saying anything or did it sound like he was just calling out as a kind of signal?

Mrs. Bouslog: I object.

Judge Biggs: I think the objection will have to be sustained, Mr. Crockett. The witness testified that he gave a [347] signal with his arm and yelled out loudly.

Q. (By Mr. Crockett): Did he yell more than once or just once?

A. Oh, I would say more than once.

Q. And when the crowd rushed forward, how did they go forward; did they go in a quiet, orderly manner?

A. No. They rushed right straight ahead.

Mrs. Bouslog: Wait just a minute. I object because Mr. Crockett is leading his witness.

Judge Biggs: This is a rather important portion of the testimony. We of course have a right to accept leading questions. We have done so repeatedly. I think it would be better not to lead in this particular instance. Mr. Freitas is a police officer, an experienced person, and just have him characterize it in his own way.

Mrs. Bouslog: I want to make the further objection, your Honor, that the question has been asked and answered once.

Judge Biggs: We will overrule the objection and ask Mr. Crockett not to reiterate that same line.

(Testimony of Andrew S. Freitas.)

Q. (By Mr. Crockett): Would you describe how the crowd rushed forward, Mr. Freitas?

A. I saw some just run right straight for the pineapple bins and I saw others run sort of low, run to the edge of the bins. And I kept watch on the first few. I kept my eyes on them; especially on Barbosa there. [348]

Q. May I ask: Was there any noise there?

A. There was all kinds of yelling. Just yelling. I never heard so much yelling in all my life, in all my police experience. These fellows were yelling at the top of their voices.

Q. And by "these fellows" whom do you mean?

A. I mean the union men there.

Q. And with respect to the people rushing forward, whom do you mean? Do you mean the people who were rushing forward—

A. (Interrupting): At the same time they were running they were yelling.

Q. You mentioned that they mounted the bins. Are the bins that they mounted shown in any of those pictures which you have before you; if so, refer to the number and point them out.

A. These photographs show some on a truck here.

Judge Biggs: Will you refer to the exhibit, please?

A. That is on C-5.

Mr. Crockett: If the Court please, these have not been heretofore offered in evidence.

(Testimony of Andrew S. Freitas.)

Q. (By Mr. Crockett): Showing you two other pictures.

A. These two are two good pictures but they are not marked.

Judge Biggs: Do you intend to offer them?

Mr. Crockett: Yes, I do, if the Court please.

Judge Biggs: Will you show them to Mrs. Bouslog and Mr. Symonds? Have you seen them? You offer them first. Three pictures or five pictures, which is it? [349]

Mr. Crockett: Three, if the Court please.

Judge Biggs: The witness identifies them as pictures taken at the scene and showing—what do you call them—bins?

Mr. Crockett: Bins, and the wharf in general at that locality.

Judge Biggs: Admitted as Exhibit L, subject to the same objection as to relevancy, and the same ruling.

The Clerk: L-1 and L-2 and L-3.

(The documents referred to were marked Defendants' Exhibits L-1, L-2, and L-3, and were received in evidence.)

Q. (By Mr. Crockett): Do these pictures, Mr. Freitas, which you have examined, show the bins to which you referred in your testimony?

A. Yes, sir.

Q. Prior to this incident, what were the conditions of those bins?

A. They were all intact. By that I mean the pineapples were in the bins.

(Testimony of Andrew S. Freitas.)

Q. The picture shows the sides of the bins lowered, with pineapples strewn on the wharf. Did that condition occur or was that the condition existing before the picture was taken or was that after? I will withdraw the question.

Judge Biggs: Your question is not clear. If they are shown in the picture, it must have existed at the time the picture was made.

Mr. Crockett: I will withdraw the question.

Q. (By Mr. Crockett): Is that the condition which existed prior to the time that those men rushed forward, or is that the condition which existed after the men rushed forward?

A. After the men rushed forward.

Judge Biggs: These are the pictures, L-1 to L-3, Mr. Crockett?

Mr. Crockett: Yes, if the Court please.

Q. (By Mr. Crockett): You mentioned the fact that some of the supervisors mounted on the bins. Do these pictures show the bins on which they mounted? A. Yes.

Q. Which pictures are you referring to?

A. That is Exhibits L-1, 2, and 3.

Q. And can you point out the particular bin where they were working?

A. I am not quite sure now, but I am almost sure that they were—the bin they were working was this first outside bin, which is indicated on this picture by the number 4574.

Q. (By Judge Biggs): When you say “out-

(Testimony of Andrew S. Freitas.)

side bin," will you give the direction in the picture? A. To the right of the picture.

Q. (By Mr. Crockett): How do these bins normally get down to the wharf, Mr. Freitas?

A. They are hauled by truck.

Q. That is, the entire bin is hauled at one time?

A. Yes, sir. [351]

Q. And then what is the procedure after that?

A. After they get to the dock they hook this spreader on it and pick it up and put it on the truck.

Q. Is the spreader shown in this picture?

A. Yes.

Q. Where is that? A. It is in Exhibit L-2.

Q. (By Judge Biggs): It is also in Exhibit L-3, is it not, Mr. Freitas? Isn't this the spreader?

A. Yes, sir.

Q. (By Mr. Crockett): What do the men that are working on top of the bins have to do with relation to that spreader?

A. They hook that spreader to a sort of eye-hook, there are four of them on the four corners of the bins.

Q. And then what is done?

A. And it is raised by the crane operator.

Q. Where is it carried to then?

A. It is carried into the barge.

Q. Is the crane shown in any of these pictures?

A. Yes.

Q. Which picture is that?

(Testimony of Andrew S. Freitas.)

A. Exhibit C-5. Exhibit C-6.

Judge Biggs: And Exhibit L-2.

A. Yes, sir.

Judge Biggs: And L-1 and L-3, as a matter of fact. A. Yes, sir. [352]

Q. (By Mr. Crockett): Did you learn the names of the two men who were working on top of the bin?

A. Yes. One was Jerome Harrington and the other was Johnson.

Q. You mentioned in your statement of this incident that those people who rushed forward mounted the bins. Are those bins which they mounted shown in either of these pictures? A. Yes.

Q. With relation to where the Supervisor Harrington and Johnson were working, which bin was it that the men mounted?

A. At the first or left on this picture marked—I believe it is—4574 on the side of this bin.

Judge Metzger: Identify it by the exhibit number.

A. Exhibit L-3.

Q. (By Mr. Crockett): That, then, was the same bin which Harrington and Johnson were working?

A. Yes, sir.

Q. I believe you testified that you saw Johnson jump off the bin? A. I did.

Q. Did you see what happened to Harrington?

A. No, I didn't.

Q. Then you mentioned about persons punch-

(Testimony of Andrew S. Freitas.)

ing or in the act or attitude of punching somebody. Was that on the same bin where Harrington had been working? A. Yes, sir. [353]

Q. Where is this crane that you said the crane operator was working; which picture is that shown on?

A. The good one would be on Exhibit L-1.

Q. Who was the operator?

A. Sonny Fernandes.

Q. He was the one you say jumped off the crane? A. That is right.

Q. Going back to the incident on top of the bins, when you saw persons striking or in the act of striking, did you identify any of those persons who were up on top of the bins at that time?

A. Yes.

Q. Who did you identify?

A. Diego Barbosa.

Q. When Sonny Fernandes was swimming in the water, I believe you testified that the persons were throwing pineapples into the water?

A. Yes, sir.

Q. Did any of them fall in the vicinity of or near where he was swimming?

A. Yes, sir.

Q. About how much does an ordinary pineapple weigh?

A. I am not an expert on pineapples. They vary, different sizes. I will say they run all the way from a pound up to about four or five pounds. They are much heavier than the ripe ones.

(Testimony of Andrew S. Freitas.)

Q. As to solidity, are they like tomatoes or fruits of [354] that type or are they more solid?

A. They are much more solid.

Q. Were there any other persons going into the water besides Fernandes? A. Yes.

Q. Who else? A. Charles Makees.

Q. (By Judge Biggs): Before we leave Fernandes. Did any of those pineapples hit Fernandes? A. No, sir.

Q. What was the other man's name—Makees?

A. Makees.

Q. (By Mr. Crockett): Makees. Where had he been working?

A. He had been working on the platform.

Q. By "platform" what do you refer to? Will you point out the platform in one of these pictures?

A. It is in Exhibit L-1. They built the platform for the men to stand on, to be able to work.

Judge Biggs: The witness points to a platform in the center of the picture. Platform and the runway between some crates and a truck, which contains crates, besides the crane, in Exhibit L-1.

Q. (By Mr. Crockett): I think you mentioned that Fernandes jumped from the crane onto the wharf and then down to a landing. Would you see if that can be pointed out on any of those pictures? [355]

Judge Biggs: It will show, I think, on Exhibit L-1.

A. It shows on Exhibit C-4 here.

(Testimony of Andrew S. Freitas.)

Q. (By Mr. Crockett): Will you describe it?

A. The regular part of the wharf is much higher; this thing is lower, to accommodate the "Manahu," which is a regular boat that goes back and forth from the Island of Lanai to Maui.

Q. The crane shown in that picture, is that the crane where Fernandes was working?

A. Yes, sir.

Q. Then he jumped from the upper portion of the wharf down to this lower landing; is that what you mean?

A. No. He went down a stairway. Fernandes, when he jumped from the——

Judge Biggs: Here. Take this. What is that?

Judge Metzger: Exhibit C-4.

Judge Biggs: Exhibit C-4.

A. We will take C-6. He jumped from the crane onto the dock, and then, as I say, he ran to my direction. I was near the edge of the dock, near the lower portion where the "Manahu" docks. He ran in that direction and went out to the wall and came back and down the stairway.

Q. (By Mr. Crockett): Does this picture you are referring to, Exhibit C-4, show where he jumped into the water?

A. Yes, sir.

Q. Were any pineapples thrown in the direction of where Makees was swimming? [356]

A. They were thrown into the barge where these other men had run into.

Judge Biggs: The answer to the question is

(Testimony of Andrew S. Freitas.)

not plain. Were they throwin' pineapples at Makees, too?

A. From what I observed, I didn't see them throw any pineapples at Makees; he was away at the edge of the barge.

Q. (By Mr. Crockett): Were any men working on the barge then, at the same time this trouble started?

Judge Biggs: Just a minute, please.

Q. (By Judge Metzger): That crane shown on Exhibit C-4, is that the one Fernandes was on?

A. Yes.

Judge Biggs: Proceed, Mr. Crockett.

Q. (By Mr. Crockett): Were any men working on the barge at the time of this trouble?

A. Yes, sir.

Q. Can you tell us who they were?

A. They were two men; one was Pavao; I cannot recall the other individual's name. He is down here. Bill. I cannot think of his name now. Two of them were on the barge.

Q. What happened?

A. They just remained on the barge all the time. Just pineapples thrown at them.

Q. Who threw the pineapples? Who threw the pineapples at them? [357]

A. Then men on top of the bins.

Q. The men on top of the bins. I think at one time you said some persons were on top of the bins. Do you mean the supervisors or those who rushed up there after the supervisors?

(Testimony of Andrew S. Freitas.)

A. I mean the union men.

Q. Who broke open the bins, as shown in the pictures?

A. Several members of the union there.

Q. The pineapple which is strewn on the wharf there; who did that? A. The union men.

Q. With respect to Lanai in general, when did you go over there?

Judge Biggs: Are you changing incidents now?

Mr. Crockett: No. We are just going back to give the Court a little background.

Judge Biggs: I thought he arrived there about 3 o'clock.

Mr. Crockett: That is at the wharf. The point I have now is conditions generally on Lanai.

Q. (By Mr. Crockett): When did you go to Lanai from Maui?

A. This incident happened on the fourteenth; the fourteenth was on Wednesday. I went there on Monday, the twelfth.

Q. Monday, the twelfth.

Mr. Crockett: I think the witness has the days of the week mixed up.

Judge Biggs: They will appear on the calendar. He [358] said he went there on the preceding Monday.

Mr. Crockett: The twelfth was the date; he said the twelfth. This incident happened on the fourteenth.

Q. (By Mr. Crockett): Had there been any

(Testimony of Andrew S. Freitas.)

picketing in and around Lanai during the time after you arrived? A. Yes, sir.

Q. Where had the picketing taken place there?

A. At Lanai City proper.

Q. Describe the nature of the picketing at Lanai City.

A. When I first arrived there they were picketing across the street.

Q. About how many men were in the line?

A. They had four rows of men.

Q. Were they abreast?

A. They were abreast.

Q. Walking? A. Walking.

Q. Will you describe as to how they were walking; what lines were they taking?

A. They were walking from right to left on the street, back and forth.

Q. Were any arrests made at any time prior to the incident that took place at the wharf?

A. Yes.

Q. How many persons were arrested?

A. One individual was arrested for loitering on the street. [359] Another one was arrested for assault and battery.

Q. Were those two separate incidents or were they only one incident?

A. They were two separate incidents.

Q. While you were at Lanai did you receive a report in regard to an assault made upon some Hawaiian boys by the name of Kalua and Nahinu?

A. I did.

(Testimony of Andrew S. Freitas.)

Q. Was that investigated by the officers under your direction? A. Yes, sir.

Q. Do you recall who were arrested in regard to that incident?

A. Several union members were arrested.

Q. Persons whose names were charged in the case of Territory v. Makekau?

A. Makekau, yes.

Mr. Crockett: If the Court please, I think that concludes the Lanai incident. I will return to the Paia incident.

Judge Biggs: That concludes Lanai.

Q. (By Mr. Crockett): Do you recollect when the strike began on Maui, that is, the sugar strike in 1946? A. Yes.

Q. About what was the date of that?

A. October 16, 1946.

Q. I am not talking about the incident. When the strike [360] first began. The strike itself began.

A. September 1. I beg your pardon. September 1, 1946.

Q. Was there any picketing of the plantations on Maui between September 1, the beginning of the strike, and immediately preceding the incident at Paia? A. Yes, sir.

Q. What was the general nature or type of picketing that was conducted during that time?

A. You mean as to orderliness?

Q. No. How was it conducted? How many persons were engaged; whether it was in large numbers or groups.

(Testimony of Andrew S. Freitas.)

A. Around the office of the mill they were very small groups, ranging all the way from 18 to 20.

Q. Which mill do you mean; all the mills or any particular mill?

A. I am speaking about the Wailuku mill. And then they had one or two men spread out over the main highways or roads leading into the plantation.

Q. Were there any places during that period where long lines formed or any large numbers formed, large mass of pickets?

A. There was no mass picketing.

Q. You saw the pictures that were run after the Lanai pictures were run this morning, purporting to show Paia? A. Yes.

Q. Was that the type of picketing that was done in some [361] places?

A. That is the type of picketing I observed during the Paia incident and the next morning after it.

Q. Was there much picketing like that going on elsewhere through the County?

A. You mean prior to the Paia incident?

Q. Yes. Prior thereto. A. No, sir.

Q. Do you recall whether or not there was a line down somewhere near the Puunene store?

A. Yes.

Q. What was the nature of that?

A. They had in the neighborhood of thirty men there. The occasion of that was that they were a little peeved at some of the union men in the

(Testimony of Andrew S. Freitas.)

store who refused to contribute 75 per cent of their salary to the union.

Mrs. Bouslog: Just a moment. I move to strike that out. I see no relevancy.

Judge Biggs: I think it can be shown, the reasons for the picketing, but we have opened a very wide field, for the reason given by Mr. Freitas. Strike the answer. Ask the question again in a different form.

Mr. Crockett: Will the reporter repeat the question, please?

(The question was read by the reporter.)

Q. (By Judge Biggs): What was the nature of the picketing? [362]

A. Well, they were walking back and forth in front of the store.

Q. How many men were there?

A. There they had in the neighborhood of 25 to 30 men.

Q. The reason you believe that they were irritated was because of certain company employees who continued to work inside the store?

A. Yes, sir.

Judge Biggs: I think that covers it.

Q. (By Mr. Crockett): Were there any arrests made in connection with that picket line?

A. No, sir.

Q. Do you recall whether or not there were any incidents during that period where homes were picketed? A. Yes, sir.

(Testimony of Andrew S. Freitas.)

Q. How many reports of that nature were brought to your attention?

A. I would say in the neighborhood of six to eight reports.

Q. Were any arrests made in connection with any of those reports? A. No arrests.

Q. (By Judge Harris): No arrests?

A. No arrests.

Q. (By Mr. Crockett): In other words, were any persons ever arrested in the Wailuku and Paia plantations in connection with [363] the strike prior to the time of the so-called Paia incident?

A. No, sir.

Q. How about on the Lahaina side, did any incidents occur over there? A. Yes.

Q. Were any arrests made over there?

A. Yes, sir.

Q. What arrests were made over there, or what incident? First of all, what incident occurred over at Lahaina?

A. There was an assault and battery; a union—union men struck one of the supervisors there. Another incident where a union man was charged with malicious injury, where he is alleged to have closed the irrigation ditch. And the other one was for pulling the ignition wires or the distributor off of one of the supervisor's vehicles.

Q. The first matter that you referred to, assaulting the supervisor; how many persons were charged on that? A. Just one.

(Testimony of Andrew S. Freitas.)

Q. And in the malicious injury case, were any persons charged in that? A. Just one.

Q. The pulling of the wires out, were any persons charged on that?

A. I believe there were two in that particular incident.

Q. I believe there has been testimony in this case also with reference to an incident that occurred at Lahaina, where [364] Mac Yamauchi was charged with assault and battery. Did you investigate that matter or assist? A. I did.

Q. Did you question Mr. Yamauchi in that matter? A. I did.

Q. He has testified that he wasn't present when the actual assault took place. Was that brought to your attention? A. Yes, sir.

Q. What was the reason or upon what basis was it that he was charged with the other defendants?

A. Because members of the union made statements in his presence, statements that he had sent them down there to beat up the supervisors and to stop them from irrigating; that he had directed them in certain cars to go down there and do that. And Mr. Yamauchi admitted that and gave us a signed statement.

Q. As a result of that he was included with the other defendants in the warrants of arrest?

A. Yes, sir.

Q. So that between September first and the actual Paia incident, so far as you recollect, those were the only arrests that were made in connection with the strike? A. Yes.

(Testimony of Andrew S. Freitas.)

Q. So far as you recollect? A. Yes, sir.

Q. Now, was any report made to the department prior to, [365] that is, on or about October 16 or prior to October 16, with reference to men wanting to go through the picket line at the Paia Mill?

A. Prior to October 16?

Q. The evidence shows that this incident occurred on October 16. Was any report made to the police with reference to men desiring to go through the picket line prior to that incident?

A. I don't recall any report being made to the police.

Q. To refresh your memory, do you recall whether or not a report was made to the officer in charge of the Paia district that some men wanted to return to work?

A. You mentioned Lahaina. From Paia, yes.

Q. Pardon me. I restrict it to Paia. To whom was a report made, or who brought it to your attention?

A. Captain Henry Long of the Paia district.

Q. What is his official status at Paia?

A. He is district commander of the Makawao district.

Q. The Makawao district adjoins Wailuku?

A. That is right.

Mr. Crockett: The Court may wish to refer to the map to get the relation between Wailuku and Paia.

Judge Biggs: There are certain maps in evidence.

Mr. Crockett: For the information of the Court,

(Testimony of Andrew S. Freitas.)

referring to Defendants' Exhibit J-2, would you show the Court [366] where Wailuku is and where Paia is?

Judge Biggs: Does it appear on there; is it marked?

A. Yes. It shows the town of Wailuku.

Judge Biggs: The town of Wailuku is in the center of the left-hand center of the head of the island, about where the thumb joins the hand, so to speak. Very well.

Mr. Crockett: And Paia.

Judge Biggs: Where is Paia? Paia is shown on the north shore, at a distance—right here—at a distance of about seven or eight statute miles from Wailuku. What is that wavy line back of the shore line? Is that the railroad?

A. That is the road that goes all the way over to the Hana district.

Q. (By Mr. Crockett): As I understand it, then, you received a report from Captain Long concerning some men who wished to go through the line?

A. That is right.

Q. As a result of receiving that report, what steps or what action did you take?

A. We went out the next morning with some extra men.

Q. By "extra men," what do you mean?

A. Extra police officers from the Wailuku district.

Q. That is, were they men specially sworn in as police officers, or were they regular police officers?

(Testimony of Andrew S. Freitas.)

A. They were regular police officers. [367]

Q. But stationed in the Wailuku district?

A. Yes.

Q. How many men are normally stationed in the Paia district? A. From 12 to 14 men.

Q. How many were taken from Wailuku district that morning? A. We took seven men.

Q. About what time did you arrive up at the mill?

A. We arrived at the mill about 6:45 a.m.

Q. Had you seen the picketing that had been conducted in the vicinity of the mill and the plantation prior to the 16th? A. No, I didn't.

Q. When you arrived there, then, this morning will you describe to the Court what you saw and what you observed at that particular time, in regard to picketing or men being gathered there?

A. Upon my arrival I observed—I noticed that the picket line started from the mauka tracks and went down through the makai tracks. That is where the post-office is located. But as you come from the Maukua tracks, going makai, there was a service station. There was a single line from the service station to the entrance leading to the mill, there were two columns, and from there on down to the makai tracks there was just one column. And about two or three minutes later the situation changed. They put on two more columns from the service station down to the entrance of the mill, which made four columns in front of the mill. [368]

(Testimony of Andrew S. Freitas.)

Q. This line, how was it moving?

A. It moved at a very slow pace.

Q. What was the situation with respect to the distance between the individual pickets?

A. I would say that they were ranging from 2 to 4 feet apart.

Q. You mean 2 to 4 feet between the men?

A. From one individual to the next individual.

Q. With respect to these different columns, how closely together were they?

A. They were about three feet apart.

Q. What was the nature of the crowd, as to orderliness?

A. Other than a few yells to certain "old-timers" passing by in trucks, they were very orderly.

Q. Did you see any of the persons named as defendants in the case of Territory vs. Kahalokula up there?

A. Yes, sir.

Q. Which persons did you see?

A. I saw Mr. Kahalokula, Levy Kealoha, and Mr. Awana, Ben Kahawanui, Maile, and Mr. Dees and Honokahi.

Q. Did you have any occasion to talk to any of those men before the incident happened?

A. Yes. I walked up towards the service station, where Mr. Kealoha was standing. As I did that I motioned for Mr. Kealoha, Maile, Mr. Awana, Dees, Kahawanui, and Honokahi. [369]

Q. Prior to calling these men together had you

(Testimony of Andrew S. Freitas.)

received any report on arrival there from any police officer concerning any matters which you wished to take up? A. I did.

Q. Which officer was that?

A. Sergeant Andoza.

Q. Had he been there before you?

A. Yes, he had been there before I arrived.

Q. When these men gathered together, will you give us the conversation that took place between you and the several persons named?

A. I referred my conversations mostly to Mr. Kealoha. I told him that Sergeant Andoza had informed me that he wanted to know whether we were going to take the men across the picket line, and if we did that there would be violence, and that the police had better get their guns ready. Mr. Kealoha told me yes, and he was here to protect these men's jobs; he wasn't going to let anyone cross the line, police or no police. Mr. Kahalokula then spoke up and says, "That is right, Chief; there is going to be violence." I then told them if they behaved themselves, there wouldn't be any violence. We didn't come here expecting to break their strike; we came here to maintain law and order, and that if any of them committed a breach of the peace in our presence that we would make arrests.

Mr. Kealoha spoke up and stated, "If that is the case, then there is going to be bloodshed." [370]

Mr. Kahalokula says, "That is right, Chief; there is going to be violence."

(Testimony of Andrew S. Freitas.)

Then Mr. Kealoha asked me for permission to talk to those five non-union men that wanted to go to work. I gave him permission. We walked over to where these men were, and Mr. Kealoha told them it was foolish for them to try to cross the picket line, and that whatever he and the other members of the union were trying to do, they were trying to better conditions for the members of the union as well as non-union members.

Mr. Moniz, one of the non-striking men, told him, "The union promised him a raise," and asked "But what have they given him? Nothing. Who is going to support my wife and children?"

Mr. Kealoha then spoke to me and said, "Chief, you had better not take them across; there is going to be trouble."

Just then the whistle of the mill sounded and we started across the street.

Q. Now, before "We started across the street," the man you referred to as Kealoha, do you know whether or not he is an employee of the plantation?

A. He is not an employee of the plantation.

Q. Is he a resident of the County of Maui?

A. No, sir.

Q. Where did he come from?

A. He came from Honolulu. [371]

Q. How long had he been on Maui prior to this incident?

A. He arrived the day previous.

(Testimony of Andrew S. Freitas.)

Q. The man you referred to as Ben Kahawanui, was he an employee of the plantation?

A. No, sir.

Q. Was he a resident of the Island of Maui?

A. No, sir.

Q. How long had he been on Maui prior to this incident?

A. He had arrived one or two days previous to the incident.

Q. At the time you had this conversation with them, do you recall whether or not either Kealoha or Kahalokula referred to his experience elsewhere in regard to strikes?

A. Yes, sir. Mr. Kealoha told me that he had been to the mainland and he had seen a lot of bloodshed.

Q. Do you recall whether anybody in the course of that conversation referred to trouble they had been in, in strikes elsewhere in the Territory?

A. Yes. Mr. Kahalokula told me that they had an incident in Hilo where several men got shot and some of them are still crippled. So I assured Mr. Kahalokula we wouldn't do any shooting, just so they obeyed the law.

Q. Did you have any gun with you?

A. No, sir.

Q. Now, we have got to the part where you say the whistle blew.

Mr. Crockett: Does the Court want to proceed or shall [372] we take a recess?

(Testimony of Andrew S. Freitas.)

Judge Biggs: How much longer will this witness' testimony take?

Mr. Crockett: At least a half hour, if the Court please. Probably longer.

Judge Biggs: Court will take a brief recess and will continue until 12:30. We will take our next recess at 12:30. We will now recess for about five minutes.

(A short recess was taken at 12:15 p.m.)

Judge Biggs: Proceed, Mr. Crockett.

Q. (By Mr. Crockett): Now, Mr. Freitas, we have covered most everything up to the time the whistle blew. What time was that?

A. It was at 7 o'clock.

Q. What whistle were you referring to?

A. The mill whistle.

Q. Prior to the blowing of the mill whistle had you seen or was your attention directed to any persons who wanted to go to work that morning?

A. Yes; they were standing alongside of me.

Q. Who were those persons?

A. They were two Souza brothers, Moniz, Kahalokula, a Filipino man that I don't recall his name.

Q. The indictment mentions a man by the name of Cordin.

A. Cordin, yes.

Q. Had you talked to them at all that morning? [373]

A. Before going over?

Q. Or at any time.

A. I talked to them after.

(Testimony of Andrew S. Freitas.)

Q. After going over? A. Yes.

Q. Then when the whistle blew, what happened then?

A. They started off with Captain Long and I followed and Kahalokula followed also. And we got across the street and all the men started converging at one point, they all started bunching up at the entrance to the mill there. When we got to the men Souza complained to Captain Long, he stated, "They won't let me go through." Captain Long said, "Where do you want to go through?"

He said, "Right here," to Awana.

Q. What Awana is that?

A. Awana is sitting in the court-room there, at the end chair.

Q. Referring to the one who was previously a witness in this case? A. Yes, sir.

Q. He is present in the court-room now?

A. Yes, sir.

Q. What happened after that? Proceed to give us what took place from that time on, without my interrupting you with questions. [374]

A. The Captain told Awana to "Open up. Let this man through."

When he said that, Awana braced himself and the men all started to push; they started to yell and push. They pushed us back about four or five feet, and I started to yell for them to stop. I told them, "Stop, boys. Don't lose your heads. Listen to me."

(Testimony of Andrew S. Freitas.)

And Joe Kahalokula spoke up and he said to them, "Listen to what the Chief has to say, boys." And that stopped everything.

Q. Proceed.

A. I then told them we were all police officers, we came over here expecting these boys to obey the law. That I had a book with me containing the Revised Laws, and I wanted to read to them that section on loitering, the law. So I read the section of the loitering law to the men. When I got through I told them that they were hindering these men's passage, for them to open up and let them go through. When I said that, why I heard Kealoha yell to the men and at the same time saw him start shoving, and everybody in front of me started to shove and push, and they pushed us over half way across the street, about 10 to 12 feet. I then yelled to them again to stop, not to lose their heads, because they were going to get into serious trouble, and that I would stop these men from going to work. So the struggle stopped. I then told [375] the non-union men to go back across the street. I told the police officers to go back also. I then told the union men, "All right now, these fellows are across the street. You go back where you were." So they went on back. I then went to where the non-union men were. I told them, I said, "Boys, we tried to take you across but you see how the crowd is. If you want to try again, I will try. I will try to take you across, but I don't assure you

(Testimony of Andrew S. Freitas.)

that I can take you across without any injury to you."

Q. Did you state "I do" or "I don't"?

A. "I cannot assure you that I can take you across without injury to you. We have 18 police officers here. We have in the crowd four or 500 men. What do you fellows want to do?"

Souza spoke up and he said, "No, no. They are mad. That is enough."

So I told the police officers to take these non-union men down to the police station, to get statements from them.

And Mr. Kahalokula came up to me, so I told him that I didn't appreciate his action, especially the statement he made during the demonstration, where I heard him remark to the men, "You remember what I told you last night, men." So I went on and said, "Joe, for a member of the legislature, for a man who makes the laws, I don't believe you used good judgment."

Joe spoke up and said, "What do you expect me to do? I represent these men. You don't expect me to sit back and not do anything?" Then he started to shout, he said, "I told [376] you not to try. Why do you want to be foolish? Why do you want to take these fellows across?"

So I told Joe it wasn't necessary for him to shout, I could hear him. I said, "I know you want to do the right thing for these boys. Come along. Let's have a cup of coffee." So I walked on.

(Testimony of Andrew S. Freitas.)

I looked back and Joe was following me. He said, "Chief, Paia is closed up. We will have to go up to the bakery." We started to walk up. He said, "No. I have my car. Let's ride up." So we both went up to the bakery there and had coffee. So I spoke to Joe and told him I thought they were very foolish for pulling that demonstration the way they did. Joe said, "Well, you can't help it, Chief. You saw the way the men acted. You cannot blame them."

I said, "Joe, I told you before we went through this thing that there would not be any violence." I said, "Look. I have no gun. I have no black-jack. If we had come out here to do any shooting or to have any violence, I certainly wouldn't have come this way."

So Joe spoke up and said, "I can see you have no gun or anything, Freitas. I want to compliment you. You really saved a lot of bloodshed over there. You did a good job. The men respect you. When you told them to stop, they stopped."

So after we had our coffee we went back. On the way back I told Joe he could pull off his picket line, that we wouldn't attempt to take anybody across. When we got there I went up to the union men and I told them I didn't know whether [377] they were bluffing, but if they were they certainly put on a good show. I also thanked them for listening to me, because otherwise some people would have got hurt. They seemed to be so elated

(Testimony of Andrew S. Freitas.)

over the fact that they started yelling and clapping, so I went back to the police station from there.

Judge Biggs: Would you have the witness identify what he means by "the loitering act." You may do that later. You may pick up the exhibit during the noon recess, Mr. Crockett.

Mr. Crockett: Yes, if the Court please, I will.

Judge Biggs: Will you do that, please?

Mr. Crockett: Yes, I will.

Q. (By Mr. Crockett): You mentioned that these men went back to the police station, that is, the non-union men went back to the police station?

A. Yes, sir.

Q. Were they able to go to work at any time that day? A. No, sir.

Q. Getting back again to the details, Mr. Freitas, showing you plaintiffs' exhibit No. 11, do you recall whether or not you read from a pamphlet similar to that, or did you have the original copy of the Revised Laws?

A. No; I had a little book that the police department—that the Territory prepared, that we use in the police school for new officers.

Q. Is that a reprint of the Revised Laws of Hawaii itself?

A. Yes. Just the criminal section of the Revised Laws of Hawaii. [378]

Judge Biggs: Can you identify it by section? We merely want to get it definitely in the record.

The Witness: I have forgotten how to pronounce

(Testimony of Andrew S. Freitas.)

his name—testified that the parts marked *and read* were read to him by Mr. Freitas. Perhaps it can be done in that way.

Q. (By Mr. Crockett): This exhibit which I have shown you shows at the top, section 11751, with the red line alongside, headed “Trespass.” Did you read that section at that time?

A. No, sir.

Q. Then that same page also has section 11771, vagrants, and so forth. At the bottom of the same page, with also a red line, I ask you whether or not you read that section? Did you read that to them at that time?

A. I didn’t read this section.

Q. Now, referring to the copy of the Revised Laws, to section 11773, entitled “Loitering. Penalty.” I will ask you whether or not that is the section which you read?

A. Yes, sir; section 11773.

Q. And that was from a reprint of the Revised Laws? A. Yes, sir.

Q. Do you recall, with reference to this exhibit which I just handed you previously, Exhibit 11, do you know whether or not these were handed out by the police at any time or given to the strike leaders?

A. Those copies were made by the police department, mimeographed [379] copies; they were furnished members of the union as well as members of industry.

(Testimony of Andrew S. Freitas.)

Q. How does it happen that this does not contain the law with reference to loitering?

A. When we first made that we discovered that we omitted the section on loitering, so we included the loitering section; there is a very small sheet there just containing this section that we attached to this form.

Q. A half page or something?

A. I don't think it was that large; about a quarter, to be exact, a quarter page.

Q. That was added to what was given?

A. Yes, sir.

Q. With reference to this incident, was that before or after the incident, the handing out of these——

A. (Interrupting): Before the strike; before September 1.

Q. Immediately before this blowing of the whistle and before you started, before you had the conference with these men, how was this line marching? I believe you described it as marching four abreast.

Judge Biggs: I don't want to limit you, Mr. Crockett. This is one of your principal witnesses. But haven't you gone over that?

Mr. Crockett: I wish to connect it up, if the Court please, and to show the change in condition.

Judge Biggs: Very well.

Q. (By Mr. Crockett): You have already described how they were marching. Did they continue

(Testimony of Andrew S. Freitas.)

approximately up to the time of the whistle blowing or was there any change in their method of marching, at the particular time you came up to the time the whistle blew?

A. Up to the time that the whistle blew they were walking in four columns and as the whistle blew and we started, they all converged, and they were stationary until we arrived.

Q. And in the converging, in the mass that converged, about how large a mass was that?

A. I would say right to the entrance of the mill over there they had a little over 200 men.

Q. Showing you the pictures, then, which were taken——

Mr. Crockett: That we offered in evidence already, if the Court please.

Q. (Continuing): Would you look at these pictures, 1, 2, 3, 4, and 5 of Defendants' Exhibit A-1, and tell the Court the sequence in which these pictures were taken and what they severally represent, referring to No. 1 first, or give your own sequence, rather.

A. Exhibit A-1 shows them picketing about five or ten minutes prior to the whistle going off. The picture Exhibit A-2 shows the non-union men and the police officers going across the street. The picture Exhibit A-3 was after we had been pushed back the first time. [381]

Q. That was about four feet, I believe you testified.

(Testimony of Andrew S. Freitas.)

A. About four or five feet. Exhibit A-4 is when we had been pushed and I was reading the loitering section to them. Exhibit A-5 shows the finish of my reading this and asking the men to open up the lines.

Q. As a matter of fact, defendants' Exhibit A-5, how close was that to the second push to which you referred?

A. The push was just about over.

Q. Just about the end of the second push?

A. Second push, yes, sir.

Q. (By Judge Biggs): Mr. Freitas, look at Exhibit 4. How many men would you say were in that picture, just approximately?

A. Just the group in front of me, sir?

Q. Yes.

A. Oh, I would say in the neighborhood of about 100.

Q. Were there more out behind this tree to the right? A. Yes; both sides of it.

Q. Both sides of it? A. Yes.

Judge Biggs: Thank you.

Q. (By Mr. Crockett): Is that also true of the picture A-5? A. Yes.

Q. That more people are out of the view of the camera? A. Yes, sir.

Judge Biggs: I think we will have to suspend at this time. May I ask the question again: Without any indication [382] or desire that you limit the witness in his testimony, how much more time will

(Testimony of Andrew S. Freitas.)

we require on examination in chief? Merely on the length of the recess; it is pertinent to that issue only.

Mr. Crockett: I think now, in the Court please, we can say perhaps fifteen or twenty minutes more we can finish with this witness.

Judge Biggs: How many more witnesses do you have?

Mr. Crockett: I have two other witnesses, who will be very brief, covering the incident that occurred at Paia, just one incident.

Judge Biggs: Court will stand in recess until 2 o'clock.

(April 26, 1948, 12:35 p.m. A recess was taken until 2 p.m.) [383]

Afternoon Session

2:00 P.M., April 26, 1948

Pursuant to noon recess, the proceedings continued as follows:

ANDREW S. FREITAS

a witness called by and in behalf of the Defendants, having been previously sworn, was examined further as follows:

Direct Examination

(Continued)

By Mr. Crockett:

Q. Mr. Freitas, you mentioned that when the men

(Testimony of Andrew S. Freitas.)

started across something happened with regard to the picket line, and you mentioned Awana. You said he braced himself. Would you stand up, please, and show the Court how Awana did this?

A. Well, on the first occasion when Souza said he wanted to go through, Awana did it this way (indicating). He put his arms out that way (indicating).

Q. (By Judge Biggs): Put his arms on his breast?
A. Arms on his breast.

Q. And his elbows out? A. Yes.

Q. (By Mr. Crockett): That was the first time?

A. The first time.

Q. And the next time when they tried to go through?

A. The second time Awana stretched his arms out.

Q. (By Judge Metzger): Did he hold them?

A. Yes. [384]

Q. (By Mr. Crockett): How close to Awana were the other men standing at that time?

A. Well, they weren't any more than a foot to 18 inches away from him.

Q. Would you say there was some space between the men? A. Between Awana and Souza?

Q. Well, I had in mind particularly the persons who were alongside or nearby Awana and the strikers.

A. The strikers were real close then. They had really bunched up.

(Testimony of Andrew S. Freitas.)

Q. Well, how close with reference to each other?

A. Well, some of them were right up to one another.

Q. Their shoulders?

A. Shoulder to shoulder.

Q. You testified that after this had occurred the men all separated. What happened after everything was all over and you went up to drink coffee with Kaholokula? Where did the men go?

A. When I got back the men were all around the entrance to the mill. There was quite a bunch there, I think, yet.

Q. Was there any picket-line at that time?

A. No, they were just standing around talking.

Q. How about the next day? Were any picket lines formed the next day?

A. The next day when I went on up there they had all the men [385] on the makai tracks. When the seven o'clock whistle started they paraded on up and turned around and came on down and then came on up again. And so Ben Kahawanui was there and I asked him what they were doing. He says, "That is a parade." I said, "What do you mean? I thought a parade started one place and finished at another." He said, "That is the parade," so I watched them, and they finally disbanded.

Judge Biggs: The witness used the words "makai tracks."

The Witness: That is towards the sea.

Judge Biggs: What about the other tracks? You mean there were railroad tracks there?

(Testimony of Andrew S. Freitas.)

The Witness: Yes, running across the street.

Q. (By Mr. Crockett): Did any workers try to go across on that following morning?

A. No, sir.

Q. Was there any picketing from that time on until the end of the strike? A. In Paia proper?

Q. Yes, in Paia proper.

A. Well, an injunction was gotten out which limited their picketing. I believe it was three men to the entrance to the mill.

Q. Well, did they picket in that form, that is just three men at the entrances of those various places?

A. My observation was that there was just about three places that they were there.

Q. So far as you know, or so far as was reported to the police were there any more long lines of 200 or 300 men like they had on those occasions?

A. They had what they called this parade, but that went on for about five days after the incident. Every morning was this so-called parade.

Q. I see. Were there any arrests made in connection with the so-called parade? A. No, sir.

Q. Then so far as Paia was concerned that ended any police activity, that is so far as any arrests or charges made against anybody? A. Yes, sir.

Mr. Crockett: If the Court please, I believe that concludes our direct-examination of this witness.

Judge Metzger: I wanted to ask about this map. Puunene doesn't seem to be shown on the map. Puunene is one of the principal settlements in the big plantation mill operations.

(Testimony of Andrew S. Freitas.)

The Witness: That's right. No, the map does not show the Puunene.

Judge Metzger: The H.C.S. mill is there, isn't it?

The Witness: That's right. It is just beyond Kahului, sir. [387]

Judge Metzger: Further away?

The Witness: Further inland.

Mr. Crockett: If the Court please, I have here a map which I don't believe would be dignified enough to offer in evidence, but it shows a little more detail.

Mrs. Bouslog: We have no objection.

Judge Biggs: I would offer it anyway. Let it be offered and marked.

Mr. Crockett: It shows the places in more detail.

Judge Biggs: Exhibit M. Let me see it. I don't see Puunene. Yes, I see it. It is spelled P-u-u-n-e-n-e.

(Thereupon, the document referred to was marked Defendants' Exhibit "M" and was received in evidence.)

Judge Biggs: Cross-examine, please.

Cross-Examination

By Mrs. Bouslog:

Q. Mr. Freitas, how long have you known Diego Barbosa?

A. I don't know him personally, other than from seeing him on the island of Lanai.

(Testimony of Andrew S. Freitas.)

Q. You only know him by picture and by sight for a very short period of time, is that correct?

A. That's right.

Q. Now, isn't it a fact that at the time you started towards the men, started towards the pack, that you didn't have your eye on any one particular individual? [388]

A. I did have my eye on that particular individual.

Q. Now isn't it a fact that the men were all watching what was going on over in the cranes and not looking at any particular individual?

A. When you say "The men" who are you referring to?

Q. You say you were watching Barbosa, is that correct?

A. I was watching the men and Barbosa was out in front.

Q. You mean to say not a single man started to move before Barbosa, before you say Barbosa waved his arms?

A. That's right.

Q. Everybody was completely motionless?

A. You mean motionless?

Q. I say they did not start to move at all?

A. Well, some of them were moving and some were stationary. They were just observing over there.

Q. Were they observing Barbosa or observing the crane from what you could tell by looking at them?

A. I didn't notice all of them as to what they

(Testimony of Andrew S. Freitas.)

were doing. Some of them were moving in the direction of the crane.

Q. Isn't it a fact that almost everybody there was watching the loading process and their attention was focused on the loading process?

A. Well, everybody,—You mean the union men or the spectators?

Q. The spectators; I don't know how you distinguish the spectators from the union men. What is your distinction? [389]

A. Well, what I might say, some disinterested parties, some school teachers and other individuals that were also there.

Q. Can you tell by looking at a person whether he is a union member?

A. Well, I know most of these other people there that teach school or are in business.

Q. Were there people there that you wouldn't be positively able to say whether they were union members or not union members?

A. Oh, I couldn't say all the people.

Q. You assumed everybody you didn't know who wasn't a police officer or who wasn't a company employee or who wasn't a school teacher was a union man, is that it?

A. I assumed the men on the picket line to be union members.

Q. Now you testified this morning that this incident lasted eight to ten minutes, is that correct?

A. I don't recall that question being propounded to me.

(Testimony of Andrew S. Freitas.)

Q. In the course of your testimony you said that it went on from about eight to ten minutes?

A. I don't remember.

Q. All right, how long did it go on?

A. From my observation, I don't think the thing lasted any more than five minutes.

Q. Isn't it a fact it didn't even last five minutes?

A. From my observation of it I would say it was five minutes. [390]

Q. Isn't it a fact that one of the three cameras placed in different angles covered every portion of the incident?

A. I only knew of two men taking pictures. I later learned there was another individual that had a movie camera?

Q. Do you know Mr. Bilson? A. Yes.

Q. Do you know Mr. Heminger?

A. Yes.

Q. Do you know Mr. De Mello? A. I do.

Q. Isn't it a fact that all three of them were taking pictures from different angles at all times?

A. Well, De Mello and Bilson were pretty close to one another, and now I later learned that Heminger was taking pictures. He was near the wall taking pictures from that direction.

Q. (By Judge Biggs): But you don't know that of your own knowledge?

A. That's right.

Q. (By Mrs. Bouslog): But the pictures that were shown this morning in toto cover the whole

(Testimony of Andrew S. Freitas.)

time of the incident from the time the men started across the line until the thing was completely finished, is that not correct?

A. No, it does not show anything about the Fernandes incident pictures.

Q. Mr. Freitas, I will have the Clerk repeat the question. [391] I don't believe you understood the question.

(The question was read by the reporter.)

Q. In other words, I am talking about the time, not whether everything is shown in the pictures, but whether or not these pictures do not run during the entire time of the incident.

A. These pictures?

Q. Yes.

A. No, they do not run the entire time.

Q. Recalling the pictures, I believe the first ones that were shown were Mr. Bilson's pictures, and they started showing some of the men leaving the walls and going towards the bins. Was that the beginning of the incident?

A. You say the men leaving the walls?

Q. Some of the men seemed to be coming across the so-called "Kapu" line. Was that the beginning of the incident?

A. The beginning of the incident was Barbosa and another individual climbing up the ramp and onto the bin.

Q. That is the beginning of it. Mr. Bilson's pictures started. That was the beginning of the incident, is that correct?

A. That's right.

(Testimony of Andrew S. Freitas.)

Q. And then Mr. Bilson's film, do you recall where Mr. Bilson's film ends?

A. No, I do not.

Q. I believe Mr. Bilson's film ends showing some people [392] standing including yourself, Mr. Freitas, I believe, standing down at the wharf's edge apparently looking towards the water. Now is that the end of the incident?

A. I don't recall the end of the incident, in the picture I am talking about.

Q. I am asking you if you recall whether everything was peaceful at the time you were standing down there with that group of men at the water's edge?

A. I only recall myself in the pictures twice, prior to the start of the incident and the next time I motioned my hands for them to go back.

Q. How were you dressed that day, Mr. Freitas, in uniform or plain clothes?

A. Plain clothes.

Q. Do you recall what kind of attire you had on? A. A tie?

Q. I say will you describe your clothing on that particular day?

A. I believe I had a coat on. If I didn't have a coat, I had a jacket. I had a top piece on, I am sure of that.

Q. At any rate, will you describe the last scene of the so-called incident? When the incident was all pau, where were you standing and what the men were doing?

(Testimony of Andrew S. Freitas.)

Mr. Crockett: If the Court please, I think that question is a little bit indefinite. I don't see how he can [393] identify, as counsel just stated, what the last scene was.

Judge Biggs: Perhaps the witness can identify it. We will overrule the objection.

Q. (By Mrs. Bouslog): That is, after everything was peaceful, what was the scene in your immediate surroundings?

A. Well, the men, some were sitting on the wall and some were down on the road.

Q. Where were you?

A. I was at the makai end of the dock.

Q. And were you down on the loading platform or up on the makai end of the wharf?

A. Of the wharf.

Q. That would be where you would be at the end, after the incident was all over? A. Yes.

Q. And if Mr. Bilson's film ends with a picture of that kind, Mr. Bilson's film represents the full period of the incident?

A. I tell you I don't recall.

Q. I say, assuming that is true, assuming his picture starts with the person you have identified as Barbosa climbing up on the bins and ends at a time when you are standing down at the makai end of the wharf with a group of men around you, that would be the whole span of the incident?

Mr. Crockett: To which we object.

Judge Biggs: Sustained. It isn't very clear. Try again, if you desire, Mrs. Bouslog. [394]

(Testimony of Andrew S. Freitas.)

Mrs. Bouslog: I think I will pass that question now, your Honor. I think that the witness has already testified what he was doing at the end. The pictures will speak for themselves.

Q. Do you know whether or not, or can you state whether or not pictures were taken at all times during the time while the incident was going on?

Mr. Crockett: If the Court please,—

Judge Biggs: If the witness knows he may answer. That is really the test.

A. I do not know.

Q. Now you personally swore out the complaints against Diego Barbosa and eleven men including Diego Barbosa, is that correct? A. Yes.

Q. And you personally swore out a complaint against 56 other men, the first offender of which was Aglian, is that correct?

A. Is that the Paia incident?

Q. No, this is still the harbor incident.

A. I may have. I don't recall about the 56 men. I remember the first incident; whatever the complaint says. If my signature is on it then I did.

Mrs. Bouslog: This, your Honors, is stipulated in evidence. It is part of the complaint.

Judge Biggs: Did you identify it? Are you referring [395] to the complaint?

Mrs. Bouslog: Yes.

Q. This is a complaint which shows "District Court of Lanai, and Andrew S. Freitas, being first duly sworn, says," and then you name 56,—

(Testimony of Andrew S. Freitas.)

A. It says I signed, Andrew S. Freitas; I did.

Q. Now what is your customary procedure when you swear out a complaint against an individual or a group of individuals as a police officer? What kind of investigation do you make before you swear out such a complaint?

A. Well, you mean in regards to all individuals?

Q. Yes.

A. Well, the men submit reports. They observe as to what certain individuals were doing and then we compile all those names and put it all in one complaint.

Q. Now the complaint form of procedure for a felony is a very unusual form of procedure in the Territory, is it not?

A. I don't know. A lot of the forms are already prepared. We don't prepare them ourselves.

Q. The usual procedure in respect to felonies is to take them before the grand jury, is that correct?

A. Yes, ma'am.

The complaint procedure under the Territorial law, to your knowledge as a police officer, is limited to those cases where it is felt to be a great and imminent danger that the person [396] will try to escape or that there is very convincing evidence of his guilt. Is that correct?

A. As far as his guilt, it isn't for me to determine. If I have enough information to show that we have evidence to substantiate what we say, then we include his name in the complaint.

(Testimony of Andrew S. Freitas.)

Q. Does the law require for you to state that this man has committed an offense and to swear to it under oath? A. It is sworn under oath.

Q. Does not the law require that it state that an offense has been committed by the particular individual? A. Yes, ma'am.

Q. And do you know of your own knowledge at this time how many people have been dropped from the complaint to which you swore on the first day of August? A. I do not.

Q. You know that a substantial number of them have been dropped? A. I do not.

Q. What did you base your information on in respect to the first eleven people and then the succeeding 56 people?

A. I can't say offhand, there is so many individuals. As I stated, I observed a few individuals and the other information was obtained from information or reports submitted by other officers or other witnesses present. [397]

Q. But you, at the time when you swore to this complaint, you did not have sufficient evidence to swear that each of these individuals had committed the offense, did you?

Mr. Crockett: To which we object, if the Court please. I submit, if the Court please, that that is not the duty of the police officer to wait until he has got sufficient evidence.

Judge Biggs: This is a matter of cross-examination, Mr. Crockett. We think the question is a proper one for that reason. Objection overruled.

(Testimony of Andrew S. Freitas.)

Q. Isn't it a fact, Mr. Freitas, that you swore out complaints against people who didn't exist, or persons, different persons, you gave them aliases which they do not have?

Judge Biggs: That question is not clear. Strike it and rephrase it, please.

Mrs. Bouslog: Will you read the question, please?

(The question was read by the reporter.)

Judge Biggs: It is not clear.

Mrs. Bouslog: I believe there was a question before that which the witness had not answered. Will you read it, please?

(The reporter reads back question at top of this page.)

Judge Biggs: Very well, we will have the answer to that question.

A. As far as I am concerned, we would have considerable [398] evidence. Otherwise, I would never have affixed my signature to this complaint.

Q. Now did you have either the testimony of an individual, or what form of identification did you have for these people at the time you signed the complaint?

Mr. Crockett: If the Court please, may I ask that question be reframed. Counsel is referring to testimony of what individuals? This witness wasn't in court. He was an investigating officer.

Mrs. Bouslog: Let me withdraw the question.

Q. What was the evidence on which you swore out the complaint?

(Testimony of Andrew S. Freitas.)

A. From my observation.

Q. Do you know a person by the name of Ag-
liam? A. I do not.

Q. Do you know what evidence you had that he
was present?

A. I have already testified that these people that
are named over there, that that was information sub-
mitted to me by members of the department or other
witnesses. What part they played I don't recall.

Q. In other words, if anybody came up and said,
"I think so and so was down at the harbor," his
name was added to the complaint?

A. I wouldn't just take that "so and so." It
would have to come from a reliable source. [399]

Q. Do you know a person named Henry Aki?

A. No, I don't.

Q. Do you know whether or not he was dropped
from the complaint? A. I do not.

Q. Did you know any of these individuals against
whom you swore out this complaint? Will you take
a look at the complaint and see if you knew any
of them?

A. All during this time I went to a trip to the
mainland, and I was gone nearly three months, so I
don't know who was dropped off these complaints or
not; if that will make it easier for you.

Q. I am asking you now if at the time you swore
to this complaint that you knew a single individual
whose name was on the complaint? Will you look at

(Testimony of Andrew S. Freitas.)

this complaint and see if you recognize any one of those 59 people?

A. Well, there is Abraham Makekau.

Q. How long have you known Abraham Makekau?

A. Just from observing him when I was there. From this list that is the only one that,—

Q. Whose name you recognize?

A. Yes, ma'am.

Q. Do you recall the names of any of the persons on the first complaint you swore out, the first ones who you alleged were the leaders? [400]

A. I haven't seen the complaint, so I don't know.

Q. Do you know a person by sight or by name named Shigeru Yagi? A. No, I do not.

Q. Isn't it a fact that the list of defendants was compiled including every union member who had been on the wharf either before or after the incident from pictures taken before the incident happened, during the incident and after the incident happened, including some pictures taken that morning? A. You mean the morning prior?

Q. The same morning of the incident.

A. There was no pictures taken the morning prior to the incident.

Q. I think the record will show they were shown.

Judge Biggs: You are losing track of the objective, at least what I assume to be your objective. Ask your question again and make it less complex.

Q. Isn't it a fact that the list of defendants in

(Testimony of Andrew S. Freitas.)

both of the cases growing out of the harbor incident were compiled on the basis of pictures which included pictures which were taken the morning of the incident, an hour preceding the incident, during the incident, and in the hour or two that followed the incident while pictures were being taken?

A. Let's take the morning first. There were no pictures taken by the police in the morning. [401]

Q. Did Lieutenant DeMello take any pictures in the morning?

A. No, ma'am, not at the dock. No pictures were taken at the dock in the morning. We were very busy with the union members up at Lanai City in the morning.

Q. You are positive about that?

A. Yes, ma'am.

Q. Were there any pictures taken before the incident occurred?

A. Oh, I would say pictures were started sometime after three in the afternoon. There were some pictures prior to the incident taken.

Q. That would be any time from sometime after three until about 4:30?

A. I arrived there at 3:05, and I would say maybe about 15 or 20 minutes later the pictures were being taken.

Q. Isn't it true that a large number of pictures were taken after everything was pau?

A. Yes, there were pictures taken afterwards.

Q. Isn't it a fact that a large group of people came down after everything was all over?

(Testimony of Andrew S. Freitas.)

A. I don't know.

Q. Did anybody come down?

A. I don't recall seeing anyone.

Q. Did you see a truck carrying 20 people come down after the incident?

A. I did not see any truck.

Q. Did you see two car loads of private individuals come [402] down after the thing was all over?

A. No, ma'am.

Q. Isn't it a fact that all these pictures were used in compiling the list of names in this complaint?

A. Well, Mrs. Bouslog, I testified that these names were submitted and the men, and witnesses—

Judge Biggs: Let's have an answer to the question, a responsive answer, and you may explain afterwards. Read the question, please.

(The question was read by the reporter.)

Judge Biggs: Either they were or they weren't.

A. They were.

Q. Did you make the decision on the basis of the facts and on the basis of what you observed what the men were to be charged with?

A. Yes. Everything was prepared by the police and taken over to the County Attorney's office for our perusal.

Q. Before the warrants were filed?

A. That's right. I would like to correct myself. In that particular incident Mr. Crockett came over to Lanai right after the incident.

(Testimony of Andrew S. Freitas.)

Q. And he instructed you to make up the complaint to read unlawful assembly?

A. After he had checked the reports.

Q. And in respect to the Barbosa group, did your instructions [403] also come from him to charge unlawful assembly? A. Yes, ma'am.

Q. Now did you at any time immediately preceding or following the Lanai Harbor incident, consult with representatives of the office of the Attorney General?

A. I had a conversation with the attorney general. I don't recall. I am not sure whether it was the Paia incident or the Lanai incident, but I did have one consultation with him.

Q. By whom were you sent over to Lanai during the Pineapple dispute?

A. By the Chief of Police.

Q. Mr. Lane? A. Yes, ma'am.

Q. And what day did you testify this morning you went over there?

A. I believe it was on a Monday, two or three days prior.

Judge Biggs: You recall there was a little question as to the date that the witness stated he went Monday preceding. He stated that was the 12th. Apparently that did not correspond with the calendar. Are you able to throw any light on that now?

The Witness: I would say, your Honor, I don't think I was there more than three days prior to the incident.

(Testimony of Andrew S. Freitas.)

Judge Biggs: It might have been the 13th for example?

The Witness: Yes, sir. [404]

Q. (By Mrs. Bouslog): How long were you over there after the 15th?

A. After the 15th, let's see. I remember we had reinforcements from the Hilo police department, so I went back to Maui about the third or fourth day after the incident.

Q. Is it not a fact, Mr. Freitas, that the pineapple strike ended on the 15th of July?

A. I don't recall the date, but I know it ended, let's see,—If I recall correctly the Hilo police department arrived the following day after the incident, and I think that same night about midnight we were informed that the strike would be called off in the morning, so I don't think it was more than a day and a half after the incident.

Q. That is the riot squad from Hilo that you are referring to? A. If they call it that.

Q. Were you present while the riot squad drilled before the employers on the common in Lanai City?

A. I don't recall any drill.

Q. Did they parade up and down in front of the common? A. They did not parade.

Q. Did they form formations?

A. No, they were just stationed down by the motor pool at different intervals.

Q. You don't recall any formations that were made out on the common? [405]

(Testimony of Andrew S. Freitas.)

A. I don't recall any formations.

Q. Where did you stay while you were on Lanai?

A. I stayed at the boarding house.

Q. And what is the boarding house?

A. Well, it is a place you board and stay. There is one hotel there that is about the only place you can stay.

Q. You mean the clubhouse up on the hill?

A. That's right.

Q. Also known as snob hill, is that correct?

A. Yes, I have often heard it called snob hill.

Q. By whom is that boarding house owned?

A. Hawaiian Pineapple Company.

Q. It is a kind of clubhouse and they have a bar?

A. No, no bar.

Q. There is a place to get food?

A. Yes, ma'am.

Q. Were all the other officers staying at this clubhouse? Including the Hilo police department?

A. No, they had some discarded army buildings back of the hospital and most of the members of the Hilo Police Department stayed there.

Q. How about the three officers from Maui, were they all staying at the clubhouse while you were there?

A. Yes.

Judge Biggs: Mrs. Bouslog, aren't you getting a [406] little far afield?

Mrs. Bouslog: I think that is the end of that line of questions, your Honor.

Judge Biggs: Very well.

(Testimony of Andrew S. Freitas.)

Q. Mr. Freitas, as assistant chief of police when you arrest persons for investigation before you question them, do you advise them of what their constitutional rights are about incriminating themselves?

A. No, I do not.

Q. Do you instruct your officers to do that?

A. The only time we instruct them is just concerning military prisoners to comply with the court martial regulations.

Q. In other words, you never tell a person that you pick up and hold under the 48 hour statute that he has a right not to answer questions?

A. Well, we never do because the Supreme Court has rendered a decision already.

Q. What Supreme Court?

A. The Territorial Supreme Court in the case of the Territory vs. Miles Yutaka Fukinaga.

Q. Is it not a fact that police officers are taught not to advise people of their rights if they do not know them already?

A. They are not taught. They are informed that it is not necessary.

Q. From your knowledge of the working people in the Hawaiian [407] Islands, Mr. Freitas, would you say that many of them are aware what their constitutional rights are?

A. I can't answer that question.

Q. From your experience as an officer in Maui County for the last three years, do you think that the average working man in the Territory knows

(Testimony of Andrew S. Freitas.)

that when he is arrested by a police officer he has a right not to answer questions which will incriminate him?

A. I already answered that I don't know.

Q. What would your answer be from your own observation?

A. There would be a certain percentage that wouldn't understand it.

Q. Very few of them?

A. I wouldn't say very few. It all depends what group we are dealing with.

Q. You testified this morning that you interviewed MacYamauchi during the sugar strike at Lanaina and that you got from him a signed statement that he ordered a group of pickets to beat up a group of men?

A. Yes, ma'am.

Q. May I see that statement?

A. Yes, ma'am.

Judge Biggs: Do you have that with you?

The Witness: I beg your pardon; no, I haven't got that. That is in the Lahaina incident. I haven't got it here. [408] That is filed at the police department on Maui.

Q. Can you produce it? A. Yes.

Q. Will you produce it, Mr. Freitas? Can you make arrangements to produce it?

A. Yes, ma'am.

Judge Biggs: When do you want it produced?

Mrs. Bouslog: As soon as he can get it, your Honor.

(Testimony of Andrew S. Freitas.)

Judge Biggs: How long would it take you to get it, Mr. Freitas?

The Witness: I can call, your Honor. As a matter of fact, if someone would call now, there is a possibility,——

Judge Biggs: If someone called now they could mail it over?

The Witness: Your Honor, I would like,—I can't speak for the chief of police. Under the law you would have to get a subpoena out to subpoena the records from the police department.

Judge Biggs: What were you going to say, Mr. Crockett?

Mr. Crockett: I was just considering the matter of time. If we can telephone up, it would be down here by tomorrow morning by ten.

Judge Biggs: Why don't you make the telephone call and get the statement here and have it tomorrow morning. Is [409] there any reason why that shouldn't be done now?

Mrs. Bouslog: We would like an opportunity to inspect it, and if relevant put a copy of it into the records of the Court.

Judge Biggs: I am wondering, you are calling for its production and as soon as it is produced it is in evidence, isn't it?

Mrs. Bouslog: Well, as I understand, we are calling for it to examine it.

Judge Biggs: At any rate you have called for it.

Mrs. Bouslog: Yes.

(Testimony of Andrew S. Freitas.)

Judge Biggs: The defendants say they will produce it, or will have it brought here, and when it is brought here we will resolve the question as to admissibility when it gets here.

Q. At the time of the Paia incident, Mr. Freitas, did you know Nils Tavares? A. Yes.

Judge Biggs: I didn't get that name.

Mrs. Bouslog: Nils Tavares.

Q. What position in the Territory did he hold at that time?

A. He was the Attorney General.

Q. Do you personally know what he does now?

A. I think he is in private law practice now.

Q. With what firm? [410]

A. Oh, let's see, that is Cassidy,—

Judge Biggs: What is the point of that?

Mrs. Bouslog: We will connect it up, your Honor.

Judge Biggs: All right, go ahead.

Q. Did you personally speak to Mr. Tavares shortly after the Paia incident?

A. I already stated I don't recall whether it was the Paia incident or whether it was the Lanai incident.

Miss Lewis: If the Court please, I think counsel will stipulate that Mr. Tavares' term of office ended as of June 30, 1947.

Mrs. Bouslog: That is correct. This is during the Paia incident in 1946 that we are now talking about.

(Testimony of Andrew S. Freitas.)

Judge Biggs: Very well.

Q. Isn't it a fact that Mr. Tavares flew over to Maui a couple of days after the so-called Paia incident?

A. He may have, but I don't recall seeing Mr. Tavares on Maui.

Q. Who instructed you to convert your investigation from one of loitering to an unlawful assembly and riot charge?

A. I told you that a report was submitted to the County Attorney's office for their perusal.

Q. We are talking about Paia.

A. Yes, Paia, the same procedure.

Q. And is it not a fact that your original investigation [411] dealt with violations of the loitering law?

A. Yes, I talked to the men. That was my idea of charging them under that section.

Q. And no other intentions were formed until several days later?

A. There is no intentions on my part, Mrs. Bouslog.

Q. You swore to the complaint? A. Yes.

Q. And that was on what day? Do you recall the date?

A. It was three days after the incident.

Q. Three days after the incident?

A. Yes.

Q. Now as a police officer in the course of your duty you make a written report of what happens

(Testimony of Andrew S. Freitas.)

when you as a police officer are present, do you not?

A. Yes, ma'am.

Q. Did you make a written report of the Paia incident after it happened? A. Yes, ma'am.

Q. Did you use that report to refresh your memory? A. You mean before coming here?

Q. Yes. A. Yes, ma'am.

Q. Will you produce a copy of that report? Can you produce a copy of that report? [412]

A. It is attached to the record. It could be produced.

Q. Do you know whether or not it is here in the courtroom?

A. It is not in the courtroom. I believe Mr. Crockett has a copy of it.

Mr. Crockett: If the Court please, I object to producing the records and files of our office. I submit, if the Court please, that is entirely out of order that counsel has a right to cross-examine this witness on anything she wishes.

Judge Biggs: How far do you propose to go with the production of records, Mrs. Bouslog, on cross-examination?

Mrs. Bouslog: Well, your Honor, Mr. Freitas testified at great length this morning from memory about this incident. He made a report at the time when it occurred. It seems that having used it to refresh his memory, certainly counsel is entitled for the purpose of cross-examination to examine the memorandum.

(Testimony of Andrew S. Freitas.)

Judge Biggs: He did testify as to one report that he had used to refresh his recollection. That question was admitted without objection. The answer to that question was admitted without objection. The matter can be pursued too far. Mrs. Bouslog, we are not trying the criminal charges. We do not propose to try them here. That is not our function. We think, however, Mr. Crockett, that Mrs. Bouslog is entitled to the report to which the witness referred when he said he refreshed his recollection. Your objection therefore is overruled.

The court will recess for five minutes.

(Recess.)

Q. (By Mrs. Bouslog): Do you recall telling Mr. Kaholokula at the time that you were glad that nothing serious had occurred? A. Yes.

Q. Do you recall telling him that you thought four or five of the boys would be arrested for violation of the loitering law? A. I did.

Q. Do you recall Mr. Kaholokula saying to you, "Why don't you arrest them all"? A. Yes.

Q. And do you recall what your reply was?

A. That we would make a test case out of the loitering law.

Q. That you would make a test case out of the loitering law? A. Yes, ma'am.

Q. Do you know a person by the name of Lionel Hanakaki? A. Yes.

Q. Of your own knowledge do you know whether he was charged with unlawful assembly and riot?

(Testimony of Andrew S. Freitas.)

A. He was.

Q. Do you recall any conversations you had with Lionel Hanakaki at or about the time of the incident?

A. He told me something about his father seeking office and [414] he didn't want to do anything to hurt his father's chances, or words to that effect.

Q. Did he say anything about wanting just an opportunity to talk to the men before they crossed the picket line?

A. You reading something that happened the day before?

Q. I am reading only from one report that is headed "Strike" and it begins at 10 a.m., October 15th, and then on the same page at six a.m., October 16th. That is the time of the incident?

A. Yes.

Mr. Crockett: If the Court please, 10 a.m., October 15th is the day before the incident.

Judge Biggs: What counsel states is not evidence.

Mr. Crockett: Yes.

Q. (By Mrs. Bouslog): And this ends with the signature Andrew S. Freitas 10/16/46 at three p.m.

A. That's right.

Q. Mr. Freitas, what further recollection do you have of what you said to or what transpired between you and Mr. Hanakaki?

A. What day are you talking about?

Q. October 16th, the date of the incident.

(Testimony of Andrew S. Freitas.)

A. I just got through saying something about his father seeking office and he didn't want to do anything that would hurt his father's chances of getting elected, or something [415] like that. It is in the report. You read it to me.

Judge Biggs: We are not going to put the report in evidence so that you may test the witness' recollection of it.

Q. (By Mrs. Bouslog): Did this conversation take place?

Judge Biggs: No, don't read it. How far do you propose to pursue this report, Mrs. Bouslog?

Mrs. Bouslog: I am almost through, your Honor.

Judge Biggs: How long is the portion you propose to read?

Mrs. Bouslog: Four or five lines.

Judge Biggs: All right, you may read it.

Q. (Reading): "Lionel Hanakaki said, 'I am a Molokai boy and my father is running for the House and I don't want to do anything that might hurt him in any way' ". That is what you testified to, is that correct? A. Yes, ma'am.

Q. Do you recall your reply to Hanakaki?

A. I don't recall.

Q. Did you reply to him that all you were interested in was keeping them clean and obeying the law and that there would be no trouble?

A. If the report says so, I did say that.

Judge Biggs: We want your recollection.

A. Now that my memory has been refreshed, your Honor, I did say it. [416]

(Testimony of Andrew S. Freitas.)

Judge Biggs: Very well.

Q. Isn't it a fact that the decision to change the Paia incident from loitering to the felony of unlawful assembly and riot was made after you spoke to the Attorney General? A. No, ma'am.

Q. Now during your testimony on direct examination, you reported a conversation that you had with one of the persons, strikebreakers who wanted to go through the lines having to do with the union failing to furnish rice. Do you recall that?

A. Yes.

Q. Do you know, of your own knowledge, whether or not there was a rice famine in the Territory during the sugar strike?

A. Well, I got all the rice I wanted. I don't know if there was a famine. I know that periods during the war there was a shortage, but whether there was a shortage at that particular time I do not know.

Q. Did not this man also say that he was tired of cabbages and carrots?

A. That he told me that?

Q. Yes, at the same time he mentioned the rice.

A. No, I don't recall him making such a statement.

Q. Is it not true, Mr. Freitas, that on or about the 45th day of the sugar strike, about the 15th and 16th, the employers in the sugar industry were trying to start a back to work movement? [417]

A. I have no knowledge of that.

(Testimony of Andrew S. Freitas.)

Q. Mr. Freitas, at the time during September, 1946, who were the members of the police commission on Maui?

A. There was Mr. Hasi, Asa Baldwin, William Tuttle, Frank Caires. Let's see, there is five. I believe Mr. Rice was on there, Oscar Rice.

Judge Biggs: Are you able to refresh your recollection by some means?

Miss Lewis: I have a list of the police commission on Maui during 1946 and 1947.

Judge Biggs: Let's have it introduced. Let it be marked, please, as Plaintiffs' Exhibit 28.

(Thereupon, the document referred to was marked Plaintiffs' Exhibit No. 28 and received in evidence.)

PLAINTIFF'S EXHIBIT No. 28

Maui Police Commission as Constituted During
the Calendar Years of 1946 and 1947

Baldwin, Asa; Caires, Frank; Hussey, Thomas K.; Rice, Harold F.; Tuttle, William P.

Admitted.

Q. (By Mrs. Bouslog): Who was the chairman of the commission at that time, Mr. Freitas?

A. It isn't clear in my mind. I know Mr. Baldwin went out. He was chairman. Then they sort of alternated between Tuttle and Asa Baldwin. Who

(Testimony of Andrew S. Freitas.)

was chairman at the time of the strike I don't know, whether Tuttle or Baldwin.

Q. Does the police commission on Maui generally supervise and direct the work of the police department for Maui County on policy matters?

A. They set the policy of the department, yes, ma'am.

Q. At the time in September, 1946, is it not a fact that Mr. Asa Baldwin who was on the police commission, was the same [418] person who was manager of the Maui Agriculture Company where the Paia incident occurred? A. Yes, ma'am.

Q. Did you receive any instructions from the police commission in respect to this incident?

A. No, ma'am.

Q. Did you have any conversation with Mr. Baldwin about the mass picketing at Paia?

A. You mean the Paia incident?

Q. About mass picketing at Paia?

A. No, ma'am.

Q. Did you have a conversation with him about the breaking up of mass picketing and the back to work movement?

A. I don't recall having any conversation with Mr. Baldwin.

Q. In the course of the recess has your memory in any way been refreshed about when you talked with Mr. Tavares, whether it was during the Lanai or during the pineapple dispute or during the sugar dispute? A. I don't recall.

(Testimony of Andrew S. Freitas.)

Q. Well, at the time when you did have the conversation with him, whether it was the pineapple or sugar, do you recall what was said?

A. If I recall, my meeting there with the Attorney General, Mr. Crockett was over there, and if my memory serves me right, you came in the room and I listened to you people go over that.

Q. Is it not true that you made a trip to Honolulu in connection with the drafting of the indictment, the 1946 indictment regarding the Paia incident?

A. No, ma'am.

Q. You were not present at the time when Mr. Fairbanks, Mr. Crockett and Mr. Tavares prepared the indictment?

A. Mr. Fairbanks? No, my only visit I recall was Mr. Crockett to Mr. Tavares and myself. I don't remember Mr. Fairbanks at all.

Q. I show you a picture, Mr. Freitas, which is an exhibit in Equity 325, Maui Agriculture Company vs. International Longshoremen's and Warehousemen's Union.

Judge Biggs: Equity in what court?

Mrs. Bouslog: Second Circuit Court of the Territory.

Q. Can you tell by examining that picture whether it was taken on the morning of the Paia incident?

A. Yes.

Q. Can you tell? Have you seen it before?

A. I may have. I don't recall this picture.

Q. Are you present in this picture?

(Testimony of Andrew S. Freitas.)

A. Yes.

Q. Which is you? A. (Witness points.)

Q. Do you know what this officer is doing standing here writing, what he is writing? [420]

A. No, I do not.

Q. In the immediate foreground of the picture on the left-hand side, the man smiling and sitting there beside two other people, can you identify that man?

A. Yes, he is one of the non-union men.

Q. He is one of the people who are charged as being terrified in this complaint, is that correct?

A. Yes, ma'am.

Q. Can you place the time of this picture as before or afterwards or during the so-called incident?

A. No, I am not able to state whether it was before or after.

Q. It could be either?

A. Could be either way, yes.

Mrs. Bouslog: I would like to offer this picture. I will have to make it subject to the same ruling.

Judge Biggs: Very well. Has opposing counsel seen it?

Mrs. Bouslog: Yes, he has seen it.

Judge Biggs: It is the record of another Court, and therefore you will have to substitute a copy for it.

Mrs. Bouslog: That is correct, your Honor.

Judge Biggs: Let it be marked subject to the

(Testimony of Andrew S. Freitas.)

same ruling and subject to the motion to strike as to relevancy, Plaintiffs' Exhibit 29.

(Thereupon, the document referred to was marked Plaintiffs' Exhibit No. 29 and received in evidence.) [421]

Q. What is the name of the person who is shown in the left lower, in the left foreground of the picture?

A. I think it shows Souza and Kaholokula.

Q. Those are two of the five people who tried to go through the line that morning?

A. Yes, ma'am.

Mrs. Bouslog: No further questions.

Judge Biggs: Redirect?

Mr. Crockett: Yes, if the Court please.

Redirect Examination

By Mr. Crockett:

Q. Mr. Freitas, who is the present chairman of the police commission? A. Mr. Oscar Rice.

Q. Isn't it a fact that he was the one who was chairman during the year previously, that is, in 1946 and 1947?

A. 1947 he was. 1946, as I testified, I am not sure.

Judge Biggs: If the fact be pertinent, certainly the parties will stipulate as to that.

Q. You said a while ago you talked to them on loitering. Was that before the incident or after the incident?

(Testimony of Andrew S. Freitas.)

A. During the incident there was one conversation where I read it, and the second conversation with Kaholokula when he and I were having coffee.

Q. After the incident was over, did you talk about charging [422] them with loitering again?

A. Mr. Kaholokula?

Q. Well, with anybody?

A. With Mr. Kaholokula, yes.

Q. Counsel asked you with regard to the practice of swearing out complaints in the county of Maui and asked you if a person who commits a serious felony is not usually taken before the grand jury. Did you understand that question?

A. Well, they are given a preliminary hearing first.

Q. Isn't it a fact that the general practice is that a warrant is sworn out and then they are taken before the district magistrate for preliminary hearing and then committed by the district magistrate to await action by the grand jury?

A. Yes, sir; that is the proper procedure.

Q. And that complaint is usually preliminary to a warrant of arrest, is it not?

A. Yes, sir.

Q. About how often do we have sessions of the grand jury in our circuit?

A. Sometimes we have one in 60 days. Sometimes in six months; it all depends on the amount of cases there.

Q. Average about every three months?

A. We have been averaging about every three months.

(Testimony of Andrew S. Freitas.)

Q. You stated that the police commission set the policies for the police department. [423]

A. Yes.

Q. What do you mean by setting the policies of the police department?

A. That is the rules and regulations. The chief of police runs the police department. They set the policy by setting the regulations.

Q. Are they charged with the,—Do they have anything to do with the employment or hiring of individual officers? A. No, sir.

Q. They fix the regulations governing the hiring of the officers? A. Yes, sir.

Q. Do they have anything to do with the suspension or dismissal of the officers?

A. The Commissioners?

Q. Yes.

A. No, sir, that is usually handled by the personnel officer with the civil service commission.

Q. Do they have anything to do in case of an appeal by the men for action taken by the chief?

A. Under civil service regulations.

Q. Under the regulations in general?

A. We are governed by the civil service regulations, that if they are dismissed then they have ten days to note an appeal before the civil service commission. [424]

Q. Do they serve on a full time basis, the police commission?

(Testimony of Andrew S. Freitas.)

A. Will you please clarify that? You mean work every day or just meet once in awhile?

Q. Yes, are they paid on a full-time basis every day or do they just meet occasionally?

Judge Biggs: Mr. Crockett, aren't you getting pretty far afield?

Mr. Crockett: Well, if the Court please, what I had in mind, counsel has referred to the fact that the manager of the M. A. Company was on this commission, and she left the Court hanging in mid air by the question that they set the policy.

Judge Biggs: I assume that the police commissioners do set the policy for the police department, don't they? Otherwise they wouldn't be police commissioners.

Mr. Crockett: I think the situation is different from what it is back in the mainland where a police commissioner serves on a full-time basis.

Judge Biggs: I see, you are bringing out the fact that they serve on a temporary basis. Do they receive pay?

The Witness: No, sir.

Judge Biggs: How often do they meet?

The Witness: Once a month.

Judge Biggs: How long are the meetings?

The Witness: It all depends on what business they have. [425]

Q. (By Mr. Crockett): How long would they average, Mr. Freitas?

A. Sometimes they are there 20 minutes, and

(Testimony of Andrew S. Freitas.)

sometimes they have a lot of bills to approve, so it is a little longer, but I don't think they meet longer than an hour and one-half at any one time.

Mr. Crockett: That is all, if the Court please.

Recross-Examination

By Mrs. Bouslog:

Q. Mr. Freitas, aren't the people of Maui County by and large a very law-abiding people?

A. They are. That's why they call it "Maui no ka oe".

Judge Biggs: What is that?

The Witness: "Maui no ka oe": Maui the best of all.

Mrs. Bouslog: No further questions.

Judge Biggs: That's all and thank you.

(The witness was excused.)

Miss Lewis: Mrs. Bouslog, you asked me about the chairmanship of the police commission. At that time the law did not provide for the governor to appoint a chairman so his records did not show it and we therefore called the police commission on Maui and ascertained that Mr. Rice was chairman during the year 1946 and 1947. Do you want to stipulate that?

Mrs. Bouslog: I will stipulate on your information.

Judge Biggs: So stipulated. [426]

Miss Lewis: Just a minute now, I don't want to be wrong about this.

Mrs. Bouslog: We will stipulate to the effect whatever the stipulation is to be.

Judge Biggs: Very well, proceed, please.

Mr. Crockett: Captain Long.

HENRY K. LONG, JR.

called as a witness by and in behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Q. State your name, please?

A. Henry K. Long, Jr.

Q. Where do you live, Mr. Long?

A. At present at Loawai.

Q. What is your official position with the County of Maui?

A. Captain of police district, Makawao.

Q. How long have you been connected with the police department of Maui County?

A. It will be 13 years the 15th of next month.

Q. How long have you lived in the county of Maui? A. I was born and raised there.

Q. Were any others in your family ever connected with the police department before you joined the police force?

A. My father was on the police department.

Q. About how long did he serve? [427]

A. About 25 years.

(Testimony of Henry K. Long, Jr.)

Q. Now what portion of the county work do you have charge of? A. The Makawao district.

Q. Does that include the town of Paia?

A. Yes, it does.

Q. During the period immediately after the beginning of the strike and up to about October 15th, the time when we had this incident, what picketing, if any, was conducted in your district?

A. During the sugar strike?

Q. Yes, during the sugar strike.

A. Picketing started on September 1st, the morning of September 1st. There wasn't too many pickets in the picket line. The number varied according to, I think, the number of men they could get out in the picket lines. In the beginning they had quite a few men. Then it started to drop off.

Q. When you say "Quite a few", about how many were there?

A. They had from about 30 to 50 men.

Q. Were there any definite lines formed at any places at the beginning?

A. At the beginning there was a line formed from the entrance to the M. A. Company all the way up to the road that leads on the mauka track.

Q. Did this picket line usually keep moving or was it stationary? [428]

A. They kept moving, and it was mostly a single line up to the entrance of the sugar mill.

Q. And about how close together did they march or walk?

(Testimony of Henry K. Long, Jr.)

A. Well, the distance varied from an arm's length to about 5 feet.

Q. Did that form of picketing continue very long after the start?

A. You mean for a month or two months after the strike started?

Q. Well, how long did they continue to picket in that manner from the beginning? I am talking about the first part of the strike.

A. I can't recall. The number started to drop down after the strike lengthened. After two or three weeks the number of men in the picket line started to drop.

Q. Isn't it a fact that shortly after the beginning of the strike it dwindled down to only be about three or four standing post, you might say, at certain fixed places?

Mrs. Bouslog: Your Honor, I would ask the question be stricken and rephrased as leading. He is actually testifying for the witness.

Judge Biggs: The question is leading, but I think we will allow that question in that form. Overruled.

Mr. Crockett: Will you read the question, please?

(The question was read by the reporter.)

A. Yes, that is correct.

Q. Now during that period were there any occasions to arrest or any complaints made by anyone about any violations of any of the laws?

(Testimony of Henry K. Long, Jr.)

A. No.

Q. Was there any other picketing conducted by the strikers during that period?

A. The picketing at the different camps, the main entrances to the different camps.

Q. Were those by lines, or were they just by fixed posts?

A. Some were fixed posts; some were lines.

Q. Was there any picketing around or near the homes of any of the workers?

A. There was picketing at the workers' homes.

Q. How many incidents of that nature were reported to the police?

A. I recall two incidents.

Q. Were any arrests made on account of any of those incidents?

A. No, no arrests made.

Q. Now did you see the pictures which were shown this morning, particularly referring to the colored pictures shown by the plaintiffs? Did you see those pictures?

A. Yes, I did.

Q. Were you able to recognize where that took place?

A. Yes, I did. [430]

Q. What was that a picture of, from your recognition?

A. Part of that was the picket line on Baldwin Avenue in the vicinity of the M. A. Company mill entrance, and part of it was a parade that they had.

Q. Well, referring particularly to the picket line then, was that prior to the incident or was that during the incident, from what you observed?

(Testimony of Henry K. Long, Jr.)

A. That I can't recall.

Q. Did that picture showing the picket line, was that a fairly correct picture of how the picketing was generally conducted? A. Yes.

Q. Now on or about the 15th of October, did you receive, or did your office receive any report or request from any persons in regard to going back to work? A. I received that report.

Q. When did you first receive the report?

A. As I recall it was about 7:15 on September 15th.

Q. (By Judge Biggs): Morning or evening?

A. In the morning.

Q. (By Mr. Crockett): Well, I think the evidence shows the incident occurred in October.

A. October 15th.

Q. Whereabouts were you when you received that request?

A. I was standing on the highway across the entrance from [431] the M. A. Mill. I have been in the habit of, since the strike, to get down there and observe things in the morning, and I usually take a post right at the highway.

Q. Who came to you with that request?

A. A William Moniz.

Q. Is he one of the persons named in that incident? A. Yes, sir.

Q. What was the nature of his request at that time?

A. He approached me about 7:15 and stated that

(Testimony of Henry K. Long, Jr.)

he wanted to go back to work. I told him if he wanted to go, go ahead and "I will follow you across the highway. When you get to the picket line ask them to let you through". He started to walk across the highway and I followed him. He got to the picket line before I did and they wouldn't let him through. I then called Lionel Hanakaki and Nakada and Ben Awana who were there at the time. I told them that the man requested that we let him through the line, we helped him through the line, to help him to get to work, and if the line wouldn't allow him through, it would constitute a violation; they were just as much responsible for the men's action, at which time Lionel Hanakaki asked if he could talk to Willie Moniz. I told him it was his privilege. He then took Willie Moniz a little on the side and talked to him, and Willie Moniz stated in a loud voice, he said, "O.K., I am going home now, but I am coming back to work tomorrow." [432]

Q. Did you report that to your superior, Mr. Freitas? A. I did.

Q. Did any other incident occur at that time, or did Moniz leave and go?

A. Moniz turned around, crossed the highway and went home.

Q. Now you stated that Moniz first approached you on what we might say the office side of the highway. Is that where you were standing?

A. Yes, on the Hana side of Baldwin Avenue.

Q. That would be the lefthand side going up?

(Testimony of Henry K. Long, Jr.)

A. Yes.

Q. For the information of the Court, Baldwin Avenue is the name given the road between the office of the M. A. Company on one side and the mill on the opposite side, and it is also the place where this incident occurred, is it not? A. Yes.

Q. Now how were the pickets marching, or what were they doing at the time when Moniz first approached you? What was the nature of their picketing? Were they walking picketing in the manner in which you have already described, or was it different from that?

A. At the time Moniz approached me, or just prior to Moniz approaching me, the picketing was being done in a very orderly manner. There was just one double line that was walking in a circle right in the entrance of the M. A. Company mill.

Q. Then when you went across the road with Moniz, what did the picket line do at that time?

A. The picket line stood still and stood shoulder to shoulder facing the highway, and pickets from the mauka side of the Paia Store service station got down to where these men were standing in front of the entrance and increased the number there.

Q. And about to what size would you say the number was increased to?

A. They increased it to about 150 men.

Q. Now you say then you came back the next morning, on the 16th? A. Yes, I did.

Q. What time did you arrive that morning?

(Testimony of Henry K. Long, Jr.)

A. I first arrived at five o'clock in the morning, and I stayed till about 5:30 and went down to the station, and I came back up at about 6:45.

Q. About how many people were there, that is, with reference to the strikers, when you came back at 6:45?

A. The number had increased from the previous day. It was close to maybe between 300 and 400 people.

Q. Did they have a line formed at that time?

A. They had a line formed at that time.

Q. When you arrived back there, directing your attention then to what you found about 6:45, how was the line moving or acting [434] at that time?

A. When I arrived back there at 6:45, the line was very orderly.

Q. About how far did it extend?

A. From the mauka tracks to the service station there was a single line, and a double line in front of the entrance to the M. A. Company mill, and below, from the entrance to the makai tracks, a single line.

Q. Just for the information of the Court to get a better picture, when you speak of "mauka tracks" what are those tracks for?

A. Those are the M. A. Company railroad tracks that lead back into the yard, cane yard.

Judge Biggs: From the wharf to the yard?

The Witness: No, sir, from the fields.

Judge Biggs: From the fields to the yard.

(Testimony of Henry K. Long, Jr.)

Q. Then it is on this they haul their cane?

A. Yes.

Q. The makai tracks, what tracks are those?

A. There are two sets of tracks. One set is used by the Kahului Railroad Company, and it is the main line, and there is a siding there that runs into the sugar warehouse of the mill.

Q. It all belongs to Kahului Railroad?

A. I believe so. [435]

Q. That is where they haul the sugar back down to Kahului?

A. I believe so.

Q. All right now, Moniz on the day before had told you that he was coming back on this morning, you have just testified. Did he come back?

A. Yes, he came back. I saw him there.

Q. Were there any others with him who wanted to go back to work that morning?

A. Yes, there were.

Q. Who else was with him?

A. Nelson Souza and William Kaholokula and William Souza.

Q. Did you talk to any of them that morning?

A. Nelson Souza approached me that morning.

Q. What did he say at that time?

A. He said he wanted to go back to work, but that he was going to wait because there were some other boys coming.

Q. Did any more come up?

A. The only persons I recognized after he spoke to me that came up was William Kaholokula and Willie Moniz.

(Testimony of Henry K. Long, Jr.)

Q. Now will you go ahead from that point on after they arrived and tell the Court just exactly what happened from then on as you recall it.

A. After he told me that he was going to wait until the rest of the boys came, I stood back outside of the highway, off the sidewalk on the highway on the Hana side of Baldwin Avenue. [436] When the whistle blew, Nelson Souza approached me and he says, "I am ready to go to work". I told him, "You go ahead and get to the picket line and ask them to let you through, and I will follow you". So he started across the highway. I stood right by his side, on his right side, and walked up to the picket line. When we got to the picket line, the picket line wouldn't give. The picket line then had increased. The pickets on the mauka side of the service station and on the makai side of the service station started to converge down to the entrance of the mill. They were standing shoulder to shoulder facing the highway. When we got to the picket line they wouldn't let him through. I asked him, "Where do you want to go through?" He said, "Through here; through Awana". He motioned with his hand, "Through here; through Awana".

Q. That is, the person directly opposite where he pointed was Awana?

A. The person directly opposite where he was in front of the picket line.

Q. Is Awana present here now?

(Testimony of Henry K. Long, Jr.)

A. Yes, he is sitting in the first row, the fifth person from the left.

Q. What happened then?

A. When he did that, then Awana made a motion to brace himself in the line by lifting up his elbows.

Q. Stand up and show the Court how he did that. [437]

A. He did this in the line (indicating).

Mr. Crockett: The witness indicates, if the Court please, that both fists were clenched, elbows out and the fists opposite on his breast, arms not crossing.

A. And at the same time from where I stood it seemed like the crowd, the pickets that came from both ends of the entrance had got in the back and started pushing, at which time the front line was pushed right up onto myself and Moniz and we were pushed back about a foot, two feet back. In the meantime, I noticed assistant chief Freitas coming in on my right side and asking the crowd there to stop, to listen to him. I could also hear and see Joe Kaholokula and Lionel Hanakaki trying to quiet the crowd there.

Q. Proceed.

A. The Chief then started to read the loitering law from a book that is put out by the department for police instructions, and as soon as he got through reading the loitering law I could hear Joe Kaholokula. He was standing directly in front of

(Testimony of Henry K. Long, Jr.)

me and a little to the right, and he said, "Don't forget, boys. Don't forget to do what I told you, boys". When he got through saying that the whole front of that line started to move down onto us and forced us right back onto the highway.

Q. And then what happened?

A. While they were pushing us across the highway, forcing [438] us across the highway, the assistant chief Freitas then said, "Keep a cool head, boys. Let's get back on the other side of the road". So I moved back across the other side of the road. In the meantime, those boys that wanted to go to work must have, on the initial push, got them back across the highway, because when I turned around I could not see them.

Q. Did anything further happen?

A. The pickets went back to their side of the highway and the officers and the men that wanted to go back to work were standing on the Hana side of the highway. I came back and stood in the highway, the position I was in prior to crossing the highway. The non-union men, or the men that wanted to go back to work were taken down to the station and I stayed at the scene for a few minutes and then went back down to the station.

Q. Now, after this incident on the 16th, were there any other picketing by the strikers in the Paia district?

A. Yes, there was.

Q. What kind of picketing occurred after that?

A. It was picketing similar to when the strike first began.

(Testimony of Henry K. Long, Jr.)

Q. And how long did it continue like that?

A. Until the injunction was served.

Q. Except for this incident were any other arrests or charges brought by the police, so far as you know?

A. No, sir; I don't recall.

Q. Now who first appointed you as a police officer? [439]

A. Sheriff Crowell.

Q. Have you any idea how long Sheriff Crowell was on the police force? How long was he sheriff?

A. About 20 or 25 years.

Q. And prior to that he had been on the police force before that?

A. The sheriff?

Q. Yes.

A. Prior to that he was a clerk.

Q. And his total service with the police department was about how long?

A. About 35 years.

Q. In your experience as a police officer, Mr. Long, have you ever known of any occasion or any occurrence within the County of Maui which would suggest that a charge of riot or unlawful assembly should be brought against the participants on such occasions?

Mrs. Bouslog: Your Honor, I am going to object to the question as calling for a conclusion of the witness on a question which an expert opinion is called for.

Judge Biggs: We will overrule the objection and receive the answer for what it may be worth.

A. No, I don't know of any.

(Testimony of Henry K. Long, Jr.)

Q. Have you ever heard of anything from any other persons?

Judge Biggs: I think you have pursued it as far as [440] you are entitled to pursue that line.

Mr. Crockett: My question at that time was in his own experience.

Judge Biggs: Now you are asking him to testify as to the experience and recollection of others.

Mr. Crockett: Well, as a matter of reputation in the community.

Judge Biggs: We are not trying Maui County here. We have no power to try a county and don't propose to. Do you object?

Mrs. Bouslog: Yes.

Judge Biggs: Objection sustained.

Mr. Crockett: That's all, if the Court please.

Cross-Examination

By Mrs. Bouslog:

Q. Mr. Long, isn't it a fact that Joseph Kaholo-kula is the one who urged all the people to listen very carefully to what chief Freitas said when he was talking and reading the statute?

A. Yes, he was one of the men that tried to get them to quiet down so they could hear,——

Q. He said, "Listen carefully"?

Judge Biggs: Will you let the witness complete his answer?

Mrs. Bouslog: Sorry, your Honor.

Q. Did you complete your answer, Mr. Long?

A. I said that, yes, he was one of the men that

(Testimony of Henry K. Long, Jr.)

tried to get the picketers to quiet down so that they could hear the chief.

Q. No one was injured in any way, shape or form at Paia on that day?

A. No, sir; no, ma'am.

Q. Did you ever have any Legion conventions in Maui?

Judge Biggs: Is the question, "Do you ever have any Legion conventions in Maui?" Are we going to go into the American Legion?

Mrs. Bouslog: We are talking about tumult and violence.

Judge Biggs: Do I hear an objection?

Mr. Crockett: Yes.

Judge Biggs: Sustained.

Mrs. Bouslog: No further questions.

Mr. Crockett: That's all.

Judge Biggs: That is all, thank you.

(The witness was excused.)

Judge Biggs: We will take five minutes' recess.

(Recess.) [442]

JOHN E. SEABURY

called as a witness for the defendants, being duly sworn, testified as follows:

Direct Examination

By Mr. Crockett:

Q. Will you state your name.

(Testimony of John E. Seabury.)

A. John E. Seabury.

Q. Where do you live, Mr. Seabury?

A. In Wailuku, Maui.

Q. Are you a member of the county police of Maui County?

A. What is that?

Q. Are you a member of the police force of Maui County?

A. That's right.

Q. And in what capacity do you serve?

A. Detective division; captain in charge of the detective division.

Q. You are with the detective division. How long have you been in the detective division?

A. The past ten years.

Q. How long in the police force?

A. That is 20 years; starting out in 1928.

Q. How long did you live in the island of Maui?

A. I lived here since 1916.

Q. Now did you go to the island of Lanai in connection with the pineapple strike in July of 1947? [443]

A. I did.

Q. Was the report which was made concerning incident that occurred in which two Hawaiian boys, one by the name of Kalua and one by the name of Nahinu, had been assaulted; was that referred to you for investigation?

A. Yes, sir.

Q. Do you recall whether you questioned Abraham Makekau in the course of that investigation?

A. I did.

Q. Where did you question him?

A. He was questioned at the Lahaina police station,—I mean the Lanai police station.

(Testimony of John E. Seabury.)

Q. How soon after the incident?

A. About ten o'clock that morning.

Q. And when did the trouble occur?

A. Somewhere around 5:30 that particular morning.

Q. On July 15th? A. July 15th, 1947.

Q. Who was present at the time when you questioned him?

A. C. T. Moriyama. He was taking notes when I did the questioning.

Q. And by taking notes, were they in longhand or in shorthand? A. Shorthand.

Q. And did he afterwards transcribe his notes?

A. He did.

Q. Did you examine the transcription to see whether or not they corresponded to the questions you gave him and the answers as given by Makekau? A. Yes.

Q. Do you have the transcript with you at the present time? A. I have, sir.

Q. Will you refer to the notes as transcribed by Moriyama and see whether or not you asked the questions——

Judge Biggs: ' Now, Mr. Crockett, if you are going to use this to refresh the witness' recollection, and you have the transcript available, why not see if there is an objection to the transcript.

Have you any objection, Mrs. Bouslog, to the transcript?

(Testimony of John E. Seabury.)

Mrs. Bouslog: I have not examined it, your Honor.

Judge Biggs: Well, let Mrs. Bouslog examine it.

Mrs. Bouslog: Is the original here?

Mr. Crockett: Yes.

Judge Biggs: Is the original signed?

Mrs. Bouslog: Oh, this is not a signed statement.

Mr. Crockett: No, if the Court please, this is not a signed statement. We do not say it is signed.

Mrs. Bouslog: We object to it on that ground, that it does not purport to be a statement signed, and the statement [445] does not indicate whether that is his statement, or that it is what he said.

Judge Biggs: I think you will have to proceed by way of refreshment of recollection.

Q. Mr. Seabury, what was said by Mr. Makekau?

Mrs. Bouslog: We will stipulate that if the witness testifies and is asked these questions, that he would answer them in this way.

Judge Biggs: Would that be of any assistance?

Mr. Crockett: Yes, if the Court please. In other words, if counsel would permit it we would be glad to offer the statement in evidence. The original is with the records of the police department, if the Court please, and I was not aware that this was going to come up.

Judge Biggs: Mrs. Bouslog's offer goes only to this, that she will stipulate that the witness will testify in accordance with this statement?

(Testimony of John E. Seabury.)

Mr. Crockett: Yes, that is o.k.

Judge Biggs: Very well, then; let the statement be admitted subject to that condition.

It will be Defendants' Exhibit "N."

(Document offered is received and marked:
Defendants' Exhibit "N.")

DEFENDANTS' EXHIBIT N

Riot

7-15-47

Freitas, Andrew S.

Wailuku, Maui

Page 1 of Pages

Statement received from: Abraham Makekau by Captain J. D. Seabury in Lt. Medeiros' Office, Lanai Police Station on Tuesday, July 15, 1947, starting at 10:04 a.m.

Present: Abraham Makekau, Captain J. D. Seabury, T. Murayama.

Recorded in shorthand and transcribed by: T. Murayama.

* * *

Captain Seabury questioning Abraham Makekau:

Q. What is your full and correct name?

A. Abraham Makekau.

Q. Are you known by any other names?

A. That's all, for short they call me Abe.

Q. How old are you? A. Twenty-five.

Q. Are you married? A. Yes.

Q. Where do you live?

(Testimony of John E. Seabury.)

A. Block 20, House No. 4.

Q. Are you employed? A. Yes.

Q. By whom? A. Hawaiian Pine.

Q. As what? A. Painter and truck driver.

Q. How long have you been employed by this company? A. Seven months.

Q. You belong to any union?

A. Yes, I.L.W.U.

Q. And at present you are on strike?

A. Yes.

32-33-34

Statement of Abraham Makekau—

Page 2 of Pages

Q. Where were you this morning between five and six?

A. Five and six I went down with the mob.

Q. With about how many men?

A. About twenty-five men.

Q. To where?

A. I went down this Block 33 and then the fight went on.

Q. Whose house you went to?

A. I don't know whose house.

Q. You admit you went down to Kalua's place, is that right? A. That's right.

Q. What happened when you got there?

A. Had a riot.

Q. What do you mean by riot? A. Fight.

Q. Where did this fight take place, inside or outside?

(Testimony of John E. Seabury.)

A. When I was there was going on outside.

Q. Back or front? A. In the back.

Q. Who were they fighting with?

A. I guess fighting with the two brothers.

Q. When you say two brothers, you mean Samuel Kalua and Jacob Nahinu? A. Yes.

Q. Do you know as to whether they are employed by Hawaiian Pine?

A. Probably drivers, I don't know.

Q. But you know they work? A. Yes.

Q. As what? A. Truck driver.

Q. You know whether they belong to the union?

A. I don't know.

Q. I thought you said that they took some of the union boys' jobs?

A. I didn't say union boys' job, they took our job, they took our job lots of guys.

Q. When you got down to this particular house they started fighting in the rear of the house?

A. I saw them fighting.

Q. Who were present in the fight?

A. That I don't know.

34-35-36

Statement of Abraham Makekau—

Page 3 of Pages

Q. I thought you said Mendes was there?

A. Mendes was there but I didn't see him fight.

Q. You said big boy was there?

A. I saw him there but he didn't fight.

Q. Who was doing the fighting?

(Testimony of John E. Seabury.)

A. Lots of guys but I don't know them.

Q. You folks first met where this morning?

A. When I reached down there they said some guys went down so I went down.

Q. Who said that?

A. Some Filipino, some guys came from picket.

Q. You know their names? A. No.

Q. You walked down with about twnty-five men?

A. When I went down I had the guys in front of me.

Q. What was the purpose of going down to this particular house?

A. I don't know the purpose was, probably to tell the guys not to work.

Q. Did you go into the yard?

A. I went in the yard.

Q. How far in? A. Little ways in.

Q. When you go in the yard you noticed Tony Mendes there?

A. On the way I saw Tony Mendes in the yard.

Q. Where did you see Take?

A. I don't know him. I never see him, I don't know what guy.

Q. You know Mariano and Elpidio?

A. I know Mariano, big boy, by looks.

Q. Was he present with you?

A. That I don't know, I came through the back, I never see them.

Q. You witness this group was beating these two brothers? A. The fight was going on.

(Testimony of John E. Seabury.)

Q. The purpose of you going there was to tell this two brothers not to go to work?

A. Yes, that's the main purpose, because they were working.

36-37-38

Statement of Abraham Makekau—

Page 4 of Pages

Q. You mention the fact that they are taking the jobs of the strikers?

A. Not the strikers, there's lots of guys ahead of them but they can't get them, but these two just came in and got the job, but we have to go pick up pineapple first, and don't make sense, and I went down to tell them not to go work because trouble may come up, because I know Sam well, and he knows me too, we use to work together.

Q. Did you at any time strike Sam or his brother Nahinu?

A. I never, probably he saw me there, but I never strike him.

Q. And you want to say that while the fight was going on you were standing by looking?

A. Maybe I was trying to get in but too many guys.

Q. What you mean by trying to get in?

A. Get in and help the strikers but they had him already.

Q. Could you identify any of them that beat up these two brothers?

(Testimony of John E. Seabury.)

A. That I don't know but when they got through and he said he got enough and I guess he saw me.

Q. Who said "I got enough"?

A. I guess Sam's brother.

Q. You noticed as to whether Jacob was bleeding or not?

A. He was bleeding.

Q. Where?

A. I don't know, around the face.

Concluded July 15, 1947, at 10:20 a.m.

I have read the foregoing 4 pages of this statement and have had the opportunity to make corrections thereon. I know the contents thereof to be true and correct to the best of my knowledge and belief.

.....
Witnessed by:

Admitted.

Q. Mr. Seabury, from your experience as a police officer in the County of Maui, will you state whether or not there has [446] been any incident on which the charge of riot and unlawful assembly should have been offered or made against the person involved in such incident?

Judge Biggs: Same objection?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: We will receive it for what it is worth. I don't think it is worth very much, Mr. Crockett, anyway, and he is not a qualified member of the bar, but we will receive it and overrule the

(Testimony of John E. Seabury.)

objection. I say "we don't," but I am speaking for myself, I guess. I do not consider it worth very much.

Q. Will you answer the question.

(Last question read by reporter.)

A. No.

Cross-Examination

By Mrs. Bouslog:

Q. Did you make the entire investigation, of the so-called Makekau incident, the Kalua incident?

A. I questioned about four or five of them.

Q. Did you speak to the Kalua brothers before talking to any of the union boys?

A. Yes, I talked to the Kalua brothers.

Q. When did you first see either of the Kalua brothers?

A. I saw Samuel Kalua that particular morning at the police station, and later saw his brother Jacob after he was treated [447] by the doctor.

Q. You saw Jacob. Sam had no visible injuries, is that correct? A. Sam, yes.

Q. And Jacob you saw after he had been to the hospital?

A. That's right; he was bandaged.

Q. Did you send him to the hospital?

A. I did not.

Q. Who did, do you know? A. No.

Q. Do you know whether any police officer sent him to the hospital?

A. I believe some police officer took him to the hospital for treatment.

(Testimony of John E. Seabury.)

Q. Did you request that the picture of Sam be taken? A. No, Madam.

Q. You saw Sam at the police station, is that correct? A. That's right.

Q. And Jacob after he got out of the hospital?

A. That's correct.

Q. And how long had you known the Kalua brothers?

A. Just that particular morning,—Pardon me—I will take that back. A couple of mornings before the incident.

Q. You had talked to them?

A. No, not talked to them. I saw them. [448]

Q. You saw them? A. Yes.

Q. Under what circumstances did you see them?

A. I believe I saw them driving a truck.

Q. Driving a truck. In other words, they were working during the strike?

A. That's right.

Q. Do you know how long they had been on Lanai? A. I don't.

Q. When you spoke to Makekau what did you tell him, before you started to question him?

A. I asked him in the presence of Jacob, the fact that he heard the statement of Jacob,—Jacob's statement was made in his presence, and I asked him if he had been down to Jacob's home and he admitted going down to the home on that particular morning.

Q. He said he had been down to Jacob's home that morning? A. Yes.

(Testimony of John E. Seabury.)

Q. Who took down the questions and answers, did you say?

A. Officer T. Moriyama, who is a clerk.

Q. Were they taken in shorthand or how were they taken? A. That's right, shorthand.

Q. Did you tell Mr. Makekau that he had a constitutional right not to answer the questions you were asking him? A. I did not. [449]

Q. Did you tell him he had a right to consult a lawyer before answering the questions?

A. I did not.

Q. Did you tell him that he was a local boy and that he ought to tell you who all had been down there that morning?

A. No, Madam, I don't recall asking him that. I don't recall.

Q. Isn't it a fact that he kept telling you that he had nothing to do with the assault on the Kalua boys; that he came down there afterwards?

A. He didn't tell me that.

Q. Isn't it a fact that you kept telling him that he was lying and that unless he told you who all was down there you would send him to jail for 20 years?

A. No, I did not.

Q. Isn't it a fact that Mr. Makekau told you at the time that he had taken no part in the attack on the Kalua brothers? A. That's right.

Q. He said that he had gone down there?

A. He said he had gone down there; he attempted to help the strikers, that they were in a

(Testimony of John E. Seabury.)

scuffle, and beaten up, but he could not identify the men. He stated that he had gone down there with 25 men, 25 of them; estimated about 25 men.

Q. There are a considerable number of conflicts in this statement, are there not? [450]

A. I don't think so.

Judge Biggs: The statement will speak for itself, unless you are laying the basis of some contradiction of the witness, Mrs. Bouslog.

Mrs. Bouslog: Yes, that's true.

Q. Mr. Makekau told you that he went down to warn the Kalua brothers that some of the boys were sore because they were scabbing, isn't that correct?

A. No, sir, he did not.

Q. Did Mr. Makekau say to you that he went down to tell the guys not to work?

A. Yes, he did. He said he went down to tell them not to work, because they were taking the jobs away from men that had worked from the bottom up, almost from picking pineapple, and these boys came in to take their jobs, and what he meant, I don't know.

Q. Didn't he say that he never at any time struck Sam, and didn't know who did?

A. He did not strike Sam, he said, and he went in to attempt to help the strikers, but he never had a chance to.

Judge Biggs: Have you any further witnesses?

Mr. Crockett: I have none, if the Court please.

Judge Biggs: Or any redirect?

(Testimony of John E. Seabury.)

Mr. Crockett: No redirect.

(Witness excused.) [451]

Judge Biggs: Have you any further witnesses?

Miss Lewis: I have a small matter to clean up, about this Oahu incident, but maybe we could get a stipulation and we would not have to call a witness.

Mrs. Bouslog: We would be very glad to try to work out a stipulation.

Miss Lewis: I think the record on that is not clear, and I would like the record to show that the matter in which Mr. Sibolboro was involved was an incident at K-I road in the vicinity of Wahiawa, on the morning of July 13, 1947, and there was another incident involving about 83 men and——

Mrs. Bouslog: And one woman.

Miss Lewis: Well, let's say about 83 persons, at Turner's Switch, near Wahiawa, in the afternoon, and that that is the same incident that is involved in the case called Territory vs. Duz, and I propose to produce the information in that case for the purpose of showing that as far as the Attorney General is concerned he has brought that incident before Judge Moore for his consideration, as to whether it was a contempt.

Judge Biggs: Are you able to stipulate?

Mrs. Bouslog: I cannot stipulate that Mr. Sibolboro was arrested, as appears in the record, or was arrested in a separate incident, from that of the other 83 persons, but [452] I can also stipulate that

83 persons were arrested and were charged, and that their cases were later nolle prossed because there was no evidence of any activity of any kind or——

Judge Biggs: Just a moment, please. What counsel say is not evidence.

Miss Lewis: Yes, your Honor.

Mrs. Bouslog: So that the cases involving those 83 people, as far as any criminal charges were concerned, were dropped. Now in the case of the Territory vs. Duz, the Attorney General's office has appointed a special deputy prosecutor to prosecute a small portion of that number, of 83 persons, for summary contempt of court, for violation of a restraining order limiting picketing.

Judge Biggs: Well, I am afraid you are too far apart to stipulate, aren't you?

Miss Lewis: Yes, I am afraid so.

Mrs. Bouslog: I don't think we are very far apart.

Miss Lewis: I thought we went too far afield, and I made my objection before.

Judge Biggs: Yes, I think you did. Call your witness, and let's see where we are.

NEAL DONAHUE

called as a witness for the defendants, being duly sworn, testified as follows: [453]

Direct Examination

By Miss Lewis:

Q. Will you state your name for the record?

A. Neal Donahue.

Q. Are you a member of the police force of the Honolulu Police Department?

A. That's right.

Q. What is your position there?

A. At the present time I am assigned as temporary captain of the Vice Division.

Q. Now were you on duty in the vicinity of Wahiawa on July 13, 1947?

A. That is correct.

Q. And do you recall an incident involving Nicholas Sibolboro? A. I do.

Q. At what place did that occur?

A. At the road that is known as K-1, leading to Robinson Camp, leading to the pineapple fields.

Q. What time of the day was it?

A. Shortly before noon; about 11:30 in the morning.

Q. Now do you recall an incident involving some 83 persons on July 13, 1947? A. That's true.

Q. What was the locality of that incident? [454]

A. The location was named Turner's Switch. It is on the opposite side of the city, the opposite side of Wahiawa, several miles out.

(Testimony of Neal Donahue.)

Q. What time of day did that occur?

A. Approximately 1:30 in the afternoon.

Q. Now were you a witness to any occurrence at Turner's Switch that afternoon? A. I was.

Q. Did you observe any obstruction to the passage of a company truck at that place?

A. I did.

Q. And did you observe any use of physical violence by picketers there? A. I did.

Q. How do you know that they were picketers, Captain Donahue?

A. I have been on the detail, what we call the strike detail, and I had been on it for several days, and I had been up and down that road and the other roads all morning and all afternoon, on the days I was assigned out there, and on this particular day I know they were picketers by the arm-bands they were wearing, and from conversations I held with members of the group, and observing the method of operation, what they were doing at that particular time.

Miss Lewis: If the Court please, I don't propose to go into the whole incident. I would like to offer a copy of [455] the information in the other matter before Judge Moore, which will speak for itself, and call the Court's particular attention to the fact that in this case, among other counts, it is charged that there was obstruction to the passage of a truck, and that was on page 7, and also that,—I call the Court's attention to page 10, a count charging that

(Testimony of Neal Donahue.)

the defendant engaged in violence against one Earl Kamajo.

Judge Biggs: Are you offering the indictment?

Miss Lewis: It is an information of the Attorney General.

Judge Biggs: Are you offering the information?

Miss Lewis: Yes, your Honor.

Judge Biggs: Do you object, as to form?

Mrs. Bouslog: No, your Honor.

Judge Biggs: Do you object?

Mrs. Bouslog: Yes. We don't concede the correctness of the facts. We admit that it is the information.

Judge Biggs: All right, we will admit it subject to the usual ruling, and I might say I entertain some doubt as to the relevancy of this document. We also,—at least I entertain, and I speak for my brethren,—some doubt; that we did not go too far afield in our previous ruling. We may have been in error in that ruling. If so, we will strike that out as well.

Miss Lewis: I made it as brief as possible, to show that inasmuch as the Attorney General is concerned, this is what he has done about that particular incident. [456]

Cross-Examination

By Mrs. Bouslog:

Q. What has happened to the other 83 people? There are now 11 charged?

(Testimony of Neal Donahue.)

A. That I don't know. All 83 were brought in and charged.

Q. Was there one woman,—there was, was there not?

A. Yes, I believe so, and one juvenile.

Q. And she was spelling her husband on the picket line,—do you know? She was taking her husband's turn on the picket line?

A. If I am correct, Mrs., there were no women at the Turners' Switch incident.

Q. With the 83?

A. No, I saw no woman there.

Q. And you don't know what happened to the other 83 people who were arrested at this same time?

A. I had heard that the cases were nolle prossed, if that is what you mean.

(Witness excused.)

Miss Lewis: I have nothing further.

Judge Biggs: Have you anything further?

Mrs. Bouslog: No further witnesses. I would like to have counsel stipulate that Mr. Ackerman, Walter D. Ackerman, Jr., took office as Attorney General October 14, 1947.

Miss Lewis: It is so stipulated in the cases.

Judge Biggs: So stipulated. [457]

Mrs. Bouslog: That prior to that time he was Treasurer of the Territory of Hawaii, and not in the office of the Attorney General, during the time that we have been discussing here.

Judge Biggs: Will you so stipulate?

Miss Lewis: That he was treasurer before the appointment, and not in the Attorney General's office during 1946 or 1947, up to that date?

Mrs. Bouslog: Yes.

Judge Biggs: So stipulated.

Have you anything else, Mr. Crockett?

Miss Lewis: I take it the matter of the production of that document is what remains.

Judge Biggs: Now, first of all, do you rest?

Miss Lewis: Yes, your Honor.

Judge Biggs: How much do you have in rebuttal, if anything?

Mrs. Bouslog: Your Honor, my rebuttal will be very short. I don't think it will take more than 10 or 15 minutes.

(Discussion as to time for adjournment, and for reconvening, etc., and as to the matter of argument.)

Judge Biggs: We will meet at 10 o'clock tomorrow for argument.

We will adjourn at this time.

(Adjourned.) [458]

April 27, 1948, 10 A.M.

(The trial was resumed.)

Judge Biggs: Proceed.

Mrs. Bouslog: Your Honor, I have a correction to the Defendants' Exhibit K, which is a correction in the statement of counsel. Mr. Crockett has indicated on the statement that he has no objection to

this being made. I would ask the Court to permit this correction to be attached to Defendants' Exhibit K for the purpose of showing the correction.

Judge Biggs: Let it be so attached.

Mrs. Bouslog: I will call Benjamin Awana.

Judge Biggs: Mr. Awana has been sworn.

Mrs. Bouslog: Mr. Awana has been sworn, your Honor.

BENJAMIN K. AWANA

a witness called by and on behalf of the plaintiffs, being previously sworn, resumed the stand and further testified as follows:

Redirect Examination

By Mrs. Bouslog:

Q. Mr. Awana, you were present in court and heard assistant chief of police Mr. Freitas testify?

A. Yes.

Q. Was there any pushing at Paia at the time of the incident, Mr. Awana?

A. There was.

Q. Before Chief Freitas read some law to you about loitering? [459]

A. No, ma'am.

Q. Now, Chief Freitas testified that the pushing started and stopped and then there was another push. Was there a second push?

A. No, ma'am.

Q. What happened after the one push?

A. The pickets returned back to walking the picket line and the "scabs" went back with the police officers, on the opposite side of the street.

Q. These are the same——

A. Yes.

(Testimony of Benjamin K. Awana.)

Q. —reproductions of the same—

Mrs. Bouslog: I have in my hand, your Honors, Defendants' Exhibit A-1.

Q. (By Mrs. Bouslog): Mr. Awana, will you look at Defendants' Exhibit A-1; that is the same picture you have in your hand? A. Yes.

Q. And tell at what time that picture was taken and what is happening.

A. Well, I cannot give the exact time the picture was taken, but this is just before the "scabs" attempted to go to work.

Judge Biggs: Can you hear, Miss Lewis?

Mr. Crockett: Not very well.

Judge Biggs: Will you keep your voice up, please?

Q. (By Mrs. Bouslog): Will you go through Defendants' [460] Exhibit A-1 to A-5 and tell the Court what each picture shows is happening, very briefly, in relation to the one push that took place? Will you look at these exhibits, that have the numbers on them, and say which picture are you referring to at the time?

A. Well, in A-1 we were—just before we had two columns going in a circle, and in A-2 police officers and "scabs" approach the line, but on the upper end, at the Makawao end, the line was still in motion. And in A-3 Chief Freitas summoned the pickets together. In A-4 he was reading the law to us. And in A-5, before we could get our men into a walking picket line, that is when the push began.

(Testimony of Benjamin K. Awana.)

Mrs. Bouslog: Your Honors, yesterday before adjournment the Court said something about identifying the film.

Judge Biggs: Yes.

Mrs. Bouslog: I have talked with the defendants and we are willing, and they are willing to stipulate on what is already in the record from their witness, Mr. Long, who said it did represent the pickets at Paia at the time.

Miss Lewis: At what time? We didn't stipulate at a particular time.

Mrs. Bouslog: Oh, I see.

Miss Lewis: Just what he testified. And he told Mrs. Bouslog what she wanted to stipulate.

Mrs. Bouslog: I misunderstood, Miss Lewis. I thought [461] you said you would stipulate that they could go in without further identification.

Miss Lewis: That is correct, but subject to the other objections. And we thought the record already showed what they were; that no stipulation would be needed.

Judge Biggs: I don't think that stipulation is needed, speaking for myself. Here are pictures which have been testified to by Mr. Long as representing the conditions of the picket line and picketing conditions during the course of the strike.

Mrs. Bouslog: Though he could not identify them as before or after the incident.

Judge Biggs: Is my recollection correct?

Mrs. Bouslog: I believe he did identify them,

(Testimony of Benjamin K. Awana.)

that he knew that they were not after the seventeenth, because picketing had stopped.

Judge Biggs: Yes. Not after the seventeenth, but the incident was the sixteenth, and they could have been taken on the seventeenth or they could have been taken before the sixteenth. I have difficulty in seeing how it is material to identify them further, unless they actually come in at the time of the incident, and you don't contend that they did.

Mrs. Bouslog: We do not, your Honor.

Judge Biggs: So that, Miss Lewis, you are prepared to stipulate that they were pictures taken of the picketing during the course of this entire period of the strike?

Miss Lewis: Yes, your Honor. During the course of the [462] strike. Now Mrs. Bouslog has clarified it. She doesn't claim it is during the incident, certainly.

Judge Biggs: Is that the fact?

Mrs. Bouslog: That is right.

Judge Biggs: Then it is so stipulated by the parties, and it is our opinion that no further identification is necessary. The Court so rules.

Mrs. Bouslog: Mr. Crockett, you may cross-examine. I have no further questions.

Judge Biggs: Cross-examine.

Mr. Crockett: I have no further cross-examination.

Judge Biggs: That is all.

(The witness was excused.)

Judge Biggs: May I inquire whether or not you have received the document Chief Freitas was to send?

Mrs. Bouslog: We have not, your Honor. Mr. Crockett advises me that the plane doesn't arrive until 9 o'clock.

Judge Biggs: It takes a little while, of course, to get it down here.

Swear the witness.

Mrs. Bouslog: Your Honor.

Judge Biggs: Yes, Mrs. Bouslog.

Mrs. Bouslog: In the shortness of time I did not have time to subpoena the Treasurer of the Territory to obtain from the Treasurer of the Territory a copy of the constitution and [463] by-laws of the Oriental Benevolent Association, of which Mr. Crockett testified Mr. Gamponia, the Filipino member now on the grand jury, is a member. I have showed him the constitution and by-laws, which state on their face that they are filed and certified by the insurance department of the Territory of Hawaii, but the defendants do not want to accept this as proof. If the Court will permit——

Judge Biggs: As proof of what?

Mrs. Bouslog: As proof of—that these are the constitution and by-laws.

Judge Biggs: What were you going to say?

Mrs. Bouslog: I will get a certificate from the Treasurer of the Territory that these are a certified copy of the by-laws, but because of the shortness of time we ask the Court's permission at this time

to use these but to substitute a copy certified by the Treasurer.

Judge Biggs: Proceed. No objection to that course?

Mr. Crockett: I have an objection to the materiality; I do not see the materiality.

Judge Biggs: What is the materiality?

Mrs. Bouslog: Your Honors, the defendants have put into the record a copy of the 1948 grand jury list, and Mr. Crockett in making a statement stated that there was now a person of Filipino nationality and background on the jury, and he stated that he was the president of the Oriental Benevolent [464] Association. Since we contend that the method of selection and composition of grand juries continues to be non-representative and a non-cross-section, we are showing as our rebuttal to Mr. Crockett's statement the relation of Mr. Gamponia to the union.

Judge Biggs: Mr. Crockett, I had some doubt as to the admissibility of your exhibit, I think it was your exhibit, in respect to the 1948 grand jury. We may have erred in admitting it, but if it is correctly in evidence, why is this not material as rebuttal evidence?

Mr. Crockett: If the Court please, my testimony concerning Mr. Gamponia only concerned Mr. Gamponia as an individual, and I mentioned incidentally as to his occupation being connected with this organization. Now, are we going to go back of the organization? Where is that material? To estab-

lish the identity of Mr. Gamponia as a Filipino member of our community and a citizen.

Judge Biggs: Just a moment, please. Mrs. Bouslog, we are of the opinion that this matter is collateral, but we think we probably erred in permitting testimony as to the 1948 grand jury. We will overrule Mr. Crockett's objection and receive it, subject to the usual ruling, but we will not pursue any collateral issue with respect to it any further.

Mrs. Bouslog: Except in respect to Mr. Gamponia?

Judge Biggs: We think that we probably erred in permitting testimony as to the 1948 grand jury. We did so, however, [465] and Mr. Gamponia came into the picture at that time. I suppose that you are offering this to show that he was in fact the head of this organization?

Mrs. Bouslog: No. Mr. Crockett so stated on cross-examination. Our offer of proof is that Mr. Gamponia is known and generally known as anti-union.

Judge Biggs: How will this prove it?

Mrs. Bouslog: This will show it because it shows right on its face that although dues continue, all benefits cease during periods of strike.

Judge Biggs: You can see how far away from actual proof that is.

Just a minute, Miss Lewis. We will hear you fully.

Mrs. Bouslog: I offer this as testimony connecting this up with the policy of this association and of its officers.

Judge Biggs: Just a minute.

Miss Lewis: I just wanted to say this. The reason we could not stipulate to this being the constitution and by-laws is that Mrs. Bouslog herself agreed, when we discussed it before the Court, that this was now in liquidation, and we therefore said we would have to check this, as to its status now in the Treasurer's office, but if it is now in liquidation I think it is even more remote.

Judge Biggs: I think it is very remote indeed, but I am not prepared, at this stage of the case, to state that it is not entirely immaterial, in view of our prior ruling, which [466] may have been erroneous, respecting the 1948 grand jury.

We will receive it with a great deal of doubt as to its materiality or relevancy. It really seems to me to be a collateral matter, but we will receive it none the less, subject to motion to strike.

The Clerk: Plaintiffs' Exhibit No. 30.

Mrs. Bouslog: And a certified copy will be substituted.

Judge Biggs: Yes.

(The document referred to was marked Plaintiffs' Exhibit 30, and was received in evidence.)

[Printer's Note]: See page 1790. This exhibit was later marked Exhibit 32.

PLAINTIFF'S EXHIBIT No. 32

Territory of Hawaii Treasury Department
Honolulu

I, William B. Brown, Treasurer of the Territory of Hawaii, do hereby certify that according to the records of the Territorial Treasurer's Office, the

Amended By-Laws of the Oriental Benevolent Association, as certified on December 31, 1940 by Philip P. Gamponia, its President, and Canuto Taderan, its Secretary, reads in part as follows:

“Article II:—Objects and purposes. Section 1: (c) To inculcate respect and consideration for employers of members and to instill an understanding of the dignity of labor. (d) To promote a knowledge and observance of the laws of the United States of America and of local laws, the rules and regulations of employment, and matters of general welfare and interest, especially as the same particularly affect its members.”

“Article VIII:—Benefits. Section 2. Any member, having decided to depart from the Territory of Hawaii, shall file with the Secretary, in writing, an application or claim for benefits accrued to him, and in form and content as prescribed by the Board of Directors, not less than forty-five (45) days prior to the proposed date of such departure, which application or claim shall be referred to the Board of Directors for verification and approval as a prerequisite to payment, but approval shall not be arbitrarily withheld by the Board of Directors. However, the application of any member who may be participating in an organized and general strike against his regular employment may not be approved until such strike is terminated. Of the benefit accrued, such sum, if any, as the Board of Directors may determine, may be advanced and paid to the member before his departure; the balance, if

any, may be paid in suitable exchange, payable to the member, at the place of his contemplated residence.”

That as of December 20, 1947, Philip P. Gamponia was the President of Oriental Benevolent Association:

That on December 22, 1947, pursuant to the resolution adopted by the shareholders of the Oriental Benevolent Association at a special meeting held in the Baldwin High School Auditorium, Wailuku, Maui, Saturday, December 20, 1947, to dissolve the association, the following persons were appointed by the Insurance Commissioner of the Territory of Hawaii, as Trustees to carry out the dissolution:

Philip P. Gamponia, Demtrio Gamponia, Canuto Tacderan, Aurelio Quitoriano, John S. Brown.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Treasurer's Office, at Honolulu, Territory of Hawaii, this twenty-ninth day of April 1948.

[Seal] /s/ WILLIAM B. BROWN,
Treasurer, Territory of
Hawaii.

Admitted.

Mrs. Bouslog: I call the Court's attention particularly to article 2, sections C and D and to section 2 of article 8.

Judge Biggs: I think we have gone as far on this collateral matter as we should, and somewhat further.

Miss Lewis: I wanted to ask the Court, in view of the fact that Mrs. Bouslog is allowed to substitute a certified copy later, shouldn't that certificate show the present status in the Treasurer's office?

Mrs. Bouslog: We will be very glad to.

Judge Biggs: I am quite clear it should disclose the present status of the society.

Mrs. Bouslog: That is in voluntary liquidation.

Judge Biggs: I don't think that the fact it is in involuntary or voluntary liquidation to be any more pertinent than any other issue; it is as pertinent, of course. Pure speculation. We are now speculating. [467]

Mrs. Bouslog: Your Honors, because of your Honors' ruling I will make an offer of proof about what I am going to prove by the witness who has just been sworn.

Judge Biggs: Do it by question and answer. I think that is the best way.

Mrs. Bouslog: It has a relation to Mr. Gamponia.

Judge Biggs: All right. Do it by way of question and answer, rather than by way of offer.

MARCELINO PACPACO,

a witness called by and on behalf of the plaintiffs, in rebuttal, being first sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please?

A. Marcelino Pacpaco.

Q. Speak louder, please.

Judge Biggs: I cannot hear you.

A. Marcelino Pacpaco.

Q. Will you talk so that Mr. Crockett, down here, can hear you?

A. Marcelino Pacpaco.

Q. (By Judge Metzger): P-a-c-p-a-c-o?

A. Yes.

Q. (By Mrs. Bouslog): Do you recall a meeting in June or [468] July 1946, held at Haile Maile camp on Maui? A. Yes.

Q. Were you present at that meeting?

A. Yes.

Q. Who called the meeting?

A. Filipino Community of Haile Maile.

Q. Who was present at the meeting?

A. Mr. Demetro Gamponia, Jack Hall, Mr. Bob Mokini, and most of the workers of Haile Maile.

Q. How many workers at Haile Maile?

A. Around 100 at present.

Q. What was the purpose of the meeting?

A. To organize the workers at Haile Maile to be in ILWU.

(Testimony of Marcelino Pacpago.)

Q. You say that Demetro Gamponia was present? A. Yes.

Q. Do you know who he is? A. Yes.

Q. Who is he?

A. He is an officer of the Oriental Benevolent Association.

Q. Is he any relation to Filipino—to Philip Gamponia, the president of the association?

A. Yes.

Q. Showing you plaintiffs' Exhibit 30, is that the Mr. Demetro Gamponia, the one you are referring to? A. Yes. [469]

Q. Did Demetro Gamponia speak at this meeting? A. Yes.

Q. Did he make a speech or what did he say at the meeting?

Mr. Crockett: To which we object, if the Court please, as incompetent, irrelevant, and immaterial.

Judge Biggs: Isn't this the brother?

Mrs. Bouslog: This is the assistant treasurer of the Oriental Benevolent Association. Mr. Gamponia is the president.

Judge Biggs: I think you had better make an offer.

Mrs. Bouslog: I offer to prove that at the time when this meeting was held to organize the workers into this particular union, plaintiff, Mr. Demetro Gamponia appeared and stated he was present at the request of the industry and that he wanted to translate for Mr. Jack Hall and the others the

(Testimony of Marcelino Pacpago.)

speech that was being made. In the process of translating the speech to the organization he told the workers that they didn't need a union, that the company would do everything for them that the union could do.

Judge Biggs: This is not a member of the grand jury though?

Mrs. Bouslog: This is a member of the Oriental Benevolent Association, which is run by the Gamponia family. The whole family are officers and members. Your Honor, here is a list of the officers.

Judge Biggs: Pass it up, please.

Mrs. Bouslog: Yes.

Judge Biggs: D. Gamponia is Demetro Gamponia?

Mrs. Bouslog: Yes.

Judge Biggs: Assistant treasurer.

We will hear you fully, Mr. Crockett, in just a moment, please.

Now then, you offer this for the purpose of proving that a member of the grand jury of the Filipino nationality in 1948 was, as you put it, and this is your characterization simply repeated by the Court, "anti-union," and to prove that you say that a brother who is a member of an association made a speech to the workers that they did not need a union to represent them. My first question is: What does the Oriental Benevolent Association have to do with that? Couldn't you prove, assuming its relevancy, that this particular individual made an anti-

(Testimony of Marcelino Paapago.)

union speech, without regard to his connection to an organization?

Mrs. Bouslog: We will. We have a witness who will testify as to Mr. Philip Gamponia, who is personally acquainted with him and the statements he has made. Your Honor, this is not for the purpose of showing that a particular individual on the 1948 grand jury is anti-union. The purpose for which the plaintiffs are offering to show it is that the 10,500 Filipinos in Maui County are not properly represented by a representative who understands and speaks for them. In other [471] words, the grand jury the forty-eight the fact that they are had never been any Filipinos on the grand jury before is admitted by the defendants up to this point. Then they come into this Court and represent "But now we have one." And we want to show, if it please your Honors, that even though there is one, the grand jury still lacks the character of a cross-section of the community.

Judge Biggs: Yes. But you are getting away from this document which has been introduced in evidence as Exhibit No. 30. I don't see the connection between what the witness will testify to in regard to your offer and the Oriental Benevolent Association. Will you point that out?

Mrs. Bouslog: The policy of the Oriental Benevolent Association, as shown by its by-laws already

(Testimony of Marcelino Pacpago.)

introduced in evidence, is to deny any benefits to its members while they are on strike, and to encourage the relations with the employer apart from union activity.

Judge Biggs: All right. Now Mr. Crockett.

Mr. Crockett: If the Court please, even assuming that counsel would prove what counsel says, that is, to show that Mr. Gamponia is not a proper member of the community to represent these 10,000 Filipinos, that he doesn't come into her picture of or a definition of the cross-section, if the Court please, this action is fundamentally against the jury commissioners, alleging that they have acted without discretion, and this objection is a matter of individual objection to Mr. Gamponia [472] himself. They have the right under the statute to make a challenge as to Mr. Gamponia as an individual member of the panel at the time he was drawn and sworn, but that does not show that the jury commissioners have been discriminatory. It is not up to the jury commissioners to go out and search out the highways and by-ways.

Judge Biggs: We understand that, Mr. Crockett.

Mr. Crockett: Yes.

Judge Biggs: Mrs. Bouslog, we feel this is too remote. If you have a witness who can testify respecting a matter stated by a member of the jury commission, by the jury commissioner himself—

Mrs. Bouslog: By the jury commissioner, your Honor?

(Testimony of Marcelino Pacpago.)

Judge Biggs: Isn't Mr. Gamponia a jury commissioner? Mr. Gamponia is now a member of the grand jury.

Mrs. Bouslog: That is correct, your Honor.

Judge Biggs: If you have a witness who can testify that the member of the grand jury himself, Mr. Gamponia, has made some statement——

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: We think that might be admissible, but we think this is too remote.

Mrs. Bouslog: All right. I have no further questions from Mr. Pacpaco.

Do you have any questions, Mr. Crockett?

Mr. Crockett: No questions.

(The witness was excused.) [473]

Mrs. Bouslog: I will call Mr. Pedro De la Cruz. The witness has already been sworn, your Honor.

Judge Biggs: Yes.

PEDRO DE LA CRUZ

was recalled as a witness by and on behalf of the plaintiffs, on rebuttal, and being first sworn, further testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name for the clerk, please? A. My name is Pedro De la Cruz.

(Testimony of Pedro De la Cruz.)

Q. Do you know Mr. Philip Gamponia?

A. Yes.

Q. How long have you known him?

A. Since 1936.

Q. Did he ever have a conversation with you about his relations to the pineapple or sugar industry?

A. Yes.

Q. Will you tell the Court? Where and when did you have this conversation?

Mr. Crockett: We object, if the Court please.

Judge Biggs: I think that is admissible. Purely preliminary in any event. Objection overruled.

Q. (By Mrs. Bouslog): Where and when did you have this conversation?

A. In my house in Lanai City in 1946. [474]

Q. Will you tell what that conversation was?

A. He asked me if I wanted to be a social worker for the company, and if I would like the job he could with his influence, influence to the manager, he could put me on the job.

Q. At that time did you hold any office in the union?

A. No; there was no union at that time.

Q. What did you mean by "social worker"?

A. Well, I don't know exactly, but to work in the personnel office, working among the Filipinos, to make good relations among themselves with the company.

Q. Mr. De la Cruz, you testified that this conversation took place in what year?

(Testimony of Pedro De la Cruz.)

A. In 1936.

Q. 1936? A. Yes.

Q. Do you still know Mr. Gamponia?

A. Yes.

Mrs. Bouslog: You may cross-examine. Oh, yes. That is all in relation to the grand jury.

Mr. De la Cruz, do you know——

Miss Lewis: Just a minute, Mrs. Bouslog, before you go further. We would like to move to strike, now that the witness corrected the date. It is apparent that twelve years ago is much to remote to prove anything.

Judge Biggs: We think it is very remote, but we will not strike it at this time. We will make it subject to the [475] general motion to strike.

Proceed, Mrs. Bouslog.

Q. (By Mrs. Bouslog): Do you know of your own knowledge when the white line, the white kapu line was painted down at the harbor on Lanai?

A. It was immediately before the strike in 1947.

Q. Before the preparation for the strike there was no kapu line or no white line there?

A. No.

Mrs. Bouslog: All right. That is all; you may cross-examine.

Mr. Crockett: No cross-examination, your Honor.

Judge Biggs: That is all; thank you.

(The witness was excused.)

Judge Biggs: Mrs. Bouslog, before I forget it, weren't you going to offer some proof at a later point, after Mr. Young——

Mrs. Bouslog: Your Honor, what Mr. Crockett stipulated to was that he would, and we have reserved a number——

Judge Biggs: Oh, yes.

Mrs. Bouslog: For the insertion into the record of a certificate by the secretary of the Junior Chamber of Commerce and by the secretary of the senior Chamber of Commerce as to the motions that they adopted as to their members who are also members on the grand jury.

Judge Biggs: Yes. I remember that was stipulated to, [476] and the number was reserved. I think it was No. 19.

The Clerk: 18.

Judge Biggs: 18.

The Clerk: Or 8.

Judge Biggs: It will appear from the record. I have forgotten the number.

Mrs. Bouslog: We are in the process of getting those two certificates or statements.

Judge Biggs: Very well.

Mrs. Bouslog: Am I correct, Miss Lewis and Mr. Crockett, in saying that they may go in subject to your motion—subject to your examination of the certificate and without recalling the witness?

Judge Biggs: And subject to the same ruling as to relevancy.

Miss Lewis: So far as recalling the secretary, I do not require that, but I haven't seen it and I don't know what she means by——

Judge Biggs: You either have a stipulation or

you don't. I was under the impression it had been stipulated to by counsel that the secretary of the Chamber of Commerce and the secretary of the Junior Chamber of Commerce might present certificates as to their members on the grand jury; that you reserved all of your objections as to relevancy but none as to form.

Miss Lewis: That is correct. [477]

Mrs. Bouslog: Have you received the mail yet?

Mr. Crockett: If the Court please, the document requested has just arrived. May we have a short recess of five minutes?

Judge Biggs: A recess for five minutes or longer.

(A short recess was taken at 10:45 a.m.)

Mrs. Bouslog: Your Honors, the statement was quite long and both counsel had to read it.

If Mr. Crockett is willing to stipulate that at no place in this statement does Mr. Yamauchi order anyone to go out and beat anyone up, then this stipulation will show in the record. Will you so stipulate, Mr. Crockett?

Mr. Crockett: We will not so stipulate.

Mrs. Bouslog: Then we offer it in evidence, your Honor.

Judge Biggs: Will you pass it up, please?

Mrs. Bouslog: We are offering it, as your Honor knows, because Mr. Freitas testified yesterday that Mr. Mac Yamauchi—he had a signed confession from him that he had ordered certain strikers to go out and beat other people up, and that is why

he was named in the unlawful assembly and riot indictment.

Judge Biggs: Counsel have read this through, have they?

Mrs. Bouslog: Both counsel have.

Judge Biggs: Is there any question about what it says in respect to that particular issue?

Mrs. Bouslog: We don't think so, but Mr. Crockett won't stipulate that it doesn't show that.

Judge Biggs: Have you any objection to its admission except as to form and relevancy?

Mr. Crockett: No. We are not objecting to its admission. I will stipulate to it. It speaks for itself.

Judge Biggs: Let it be admitted and marked Plaintiff's Exhibit 31. A copy ought to be substituted therefor, and I take it you have no objection to the substitution of the copy for it.

Mr. Crockett: No. I think we have copies back in the Maui office.

Judge Biggs: If you have copies back there perhaps we could retain this copy?

Mr. Crockett: Yes. Retain this until we send down the copy.

Judge Biggs: The clerk is instructed to obey the stipulation of counsel to the end that a copy may be substituted for this, if it be necessary.

Anything else, Mrs. Bouslog?

Mrs. Bouslog: Your Honor, this just came to my attention, a very recent incident for which I could not on such short notice get a witness to testify this morning. It is a matter reported in the

newspaper. I will show the matter to Mr. Crockett and if he is willing to stipulate that these are clippings, that these clippings represent the charges that are pending in the district court.

The Clerk: Exhibit 31, Mr. Reporter. [479]

(The document referred to heretofore, being statement of Mac Yamauchi, was marked Plaintiffs' Exhibit 31, and was received in evidence.)

PLAINTIFFS' EXHIBIT NO. 31

Wright, Harlow
Lahaina, Maui

Page 1 of pages

Statement received from: Mac Masato Yamauchi by Ass't Chief Freitas in Ass't Chief's Office, Wailuku Police Station on Thursday, November 7, 1946, starting at 2:30 p.m.

Present: Mac Masato Yamauchi, Ass't Chief Andrew S. Freitas, William Seabury, Sr., T. Murayama.

Recorded in shorthand and transcribed by: T. Murayama.

* * *

Ass't Chief Freitas questioning Mac Masato Yamauchi:

Q. What is your full and correct name?

A. Mac Yamauchi.

Q. Are you known by any other names?

A. Masato.

Q. How old are you?

A. Thirty-six.

Q. Where do you live?

A. Mill Street.

Plaintiffs' Exhibit No. 31—(Continued)

Q. Where is that?

A. Right below the Luna village, Lahaina.

Q. What is your occupation?

A. Carpenter.

Q. Where are you employed?

A. Pioneer Mill.

Q. How long have you been employed by the Pioneer Mill Co.

A. I have been, I don't know how long, but I work for the Pioneer Mill Co. for about six or seven years, then I went to Honolulu when I went to Honolulu war broke out, I worked for two weeks and I came back to Puunene. I worked for U.S.E.D. Naval Air Base and P.N.A.B., engineers, they sent me to Molokai. I was foreman. I came back. Since my mother wasn't feeling very well my parents told me to work at the plantation again. I went to the employment office George Leong call Pioneer Mill Office and asked if they can use me, Taylor was Assistant Manager then, he said, "sure you come back I give you work as carpenter, and ever since I have been working there.

254-255-256

Statement of Mac Masato Yamauchi

Page 2

Q. That was what year? A. 1943.

Q. Are you married? A. Yes.

Q. Any children? A. One.

Q. You are a member of the ILWU?

A. That's right.

Q. At present you are an officer of the union?

Plaintiffs' Exhibit No. 31—(Continued)

A. I am a board member.

Q. What union? A. Unit nine.

Q. That's the unit that's located in Lahaina?

A. That's right.

Q. Besides board member you hold any position?

A. No, not in the union.

Q. At the present time you're acting for the union in this strike? A. Yes.

Q. What are your duties at the present time?

A. I am the strike strategy chairman.

Q. How many members in that committee?

A. Six.

Q. Who are they?

A. Apo, Nishimoto, Felix Tugadi, Naba, Fernando Billaverde.

Q. Who are the other officers in this unit?

A. President is Wakida, vice president is Kamei Uchimura, Seabury is our secretary.

Q. You got no treasurer?

A. Treasurer is Matsuda.

Q. Yesterday morning November 6, 1946, did the strike strategy committee have a meeting?

A. No.

Q. Did they meet at any time at 6:00 o'clock in the morning? A. No.

Q. You did not meet at any time yesterday morning? A. No.

256-257-258

Statement of Mac Masato Yamauchi

Page 3

Q. Were you present at the union hall yesterday morning? A. Yesterday morning I was.

Plaintiffs' Exhibit No. 31—(Continued)

Q. What time were you at the union hall?

A. About 7:00 o'clock.

Q. Had you been there prior to seven?

A. No.

Q. Is it possible that you were there and you don't recall the time?

A. I came down about 7:00 o'clock.

Q. You positive about the time?

A. Well I usually, I come down about seven.

Q. Is it possible that you came earlier?

A. Maybe few minutes earlier?

Q. Yesterday morning, while around the vicinity of the union hall did you see other members of the union there?

A. Well, we have meeting about eight o'clock and the usual men come down.

Q. Did you see any of the men there when you first arrived there?

A. There were several of them.

Q. Did you see William Seabury?

A. When I came no, I didn't see him.

Q. When did you first see him?

A. Well we were planning to go out fishing and I usually come in the morning and I go back to my home and get my yard cleaned and I come back to the meeting. When I came back to the meeting everything appeared all right.

Q. Did you see William Seabury when you first arrived there? A. No.

Q. You did not see him at any time?

Plaintiffs' Exhibit No. 31—(Continued)

A. No.

Q. When did you first see Seabury yesterday morning? A. Well at the meeting.

Q. That was about what time?

A. About eight-thirty.

Q. You didn't see him prior to eight-thirty?

A. No.

Q. You see Ben Kaita at the union hall?

A. No.

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Statement of Mac Masato Yamauchi

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Q. Did you see him at all yesterday?

A. Well, yesterday I went out fishing out the stone crusher, I saw Ben there.

Q. What time was that?

A. About nine-thirty, close to ten o'clock.

Q. Is that the first time you saw him?

A. Yes.

Q. Did you see him when you first arrived at the union hall at any time? A. No.

Captian J. D. Seabury enters room:

Q. Did you see Takeo Taira yesterday?

A. No.

Q. Did you see him at all? A. No.

Q. You didn't see him at any time?

A. Maybe he was at the meeting.

Q. What time was that meeting?

A. About eight-thirty.

Q. Prior to that you see him? A. No.

Plaintiffs' Exhibit No. 31—(Continued)

Q. Toyama, did you see him prior to the meeting yesterday morning? A. No.

Q. Roque, did you see him yesterday?

A. No.

Q. Did you see him at any time in the morning yesterday? A. No.

Q. Did you see Jose Sullivan at any time yesterday morning?

A. No, maybe he was at the meeting.

Q. Did you see him prior to the meeting?

A. No.

Q. Did you see Masaru Mizomi yesterday morning? A. No, I saw him at the meeting.

Q. That was about what time?

A. About eight-thirty.

Q. Did you see him prior to eight-thirty?

A. No.

260-261-262

Statement of Mac Masato Yamauchi

Page 5

Q. Did you see Ichio Hirata yesterday morning?

A. He came down in the morning.

Q. That was about what time?

A. That was about eight o'clock.

Q. You didn't see him prior to eight o'clock?

A. No.

Q. You know this man sitting here? (Indicating William Seabury.) A. Oh, yes.

Q. What's his name?

A. William Seabury.

Ass't Chief Freitas questioning William Seabury:

Plaintiffs' Exhibit No. 31—(Continued)

Q. You have already given a statement to the police, did you not? A. Yes.

Q. You have given the account as to what took place? A. Yes.

Q. Yesterday morning what time did you report to union headquarters, that's November 6, 1946?

A. I was down there about six o'clock.

Q. Upon your arrival over there who did you see over there?

A. Few boys was around. Our chairman came little late.

Q. About what time would you say your chairman came? A. About a little after six-thirty.

Q. When you speak of your chairman, you mean Mac Yamauchi here? A. Yes.

Q. You have conversation with him yesterday morning? A. Yes I had.

Q. What was the conversation about?

A. We got together and got all the drivers who own cars to gather together, and drivers got together and cars were in the bunch to go to different places, the bunch of men to each car to stop the scabs that were irrigating.

Q. You people were given instruction as to what to do, were you not? A. Yes.

Q. Who gave those instructions?

A. Chairman Mac Yamauchi.

262-263-264

Statement of Mac Masato Yamauchi

Page 6

Q. What were the instructions given?

Plaintiffs' Exhibit No. 31—(Continued)

A. Have to stop the irrigation, if we see scab irrigating, we have to stop the irrigation and use our own judgment.

Q. Was there any mentioning as to if they refuse to listen to your request, as to what you people were to do? A. Use your own judgment.

Q. That statement about stop the irrigation was made by who? A. Our chairman.

Q. There were quite a lots of men around the union hall? A. Yes.

Q. Who directed these men into different cars to go to different localities? A. Our chairman.

Q. By that you mean Mac Yamauchi?

A. Yes.

Q. He assigned various union members to get into different automobiles is that right?

A. Yes.

Q. Did you assist in getting different individuals? A. Yes.

Q. Besides you and Mac, anybody else assist in directing these individuals into vehicles?

A. No.

Ass't Chief Freitas questioning Mac Masato Yamauchi:

Q. Mac Yamauchi, you heard what Mr. Seabury has to say? A. Yes.

Q. Is that right? A. That's right.

Q. Have you anything to say in regards to what he has to say? A. No.

Q. Is he telling the truth? A. Yes.

Plaintiffs' Exhibit No. 31—(Continued)

Q. Then the statement you already given as not being present sometime after 6:00 a.m. yesterday morning, November 6, 1946, was not the truth?

A. Well, I came there about seven o'clock, I don't know whether it was a little earlier or not, I usually leave my house about seven o'clock.

264-265-266

Statement of Mac Masato Yamauchi Page 7

Q. But you did go to union headquarters prior to eight-thirty like you first stated? A. Yes.

Q. You and Mr. Seabury got together over there and made plans as to what action to take?

A. That's right.

Q. What were the plans?

A. To stop the irrigation.

Q. You had reports as to who were irrigating?

A. Yes, I did.

Q. What were these reports about?

A. Well, these folks were irrigating so couple times, they all trying to make monkey out of us they were getting our goat, the ranking file come after me, what are we going to do with these guys, what can I do, why not go out and stop them, well use your own judgment.

Q. Did you have any knowledge as to who the so-called individuals were irrigating?

A. Yes, we got reports of them, all the time reports were coming in, we didn't do anything.

Q. Did you at any time contact the so-called

Plaintiffs' Exhibit No. 31—(Continued)
individuals who were irrigating and request them not to do so?

A. Well, not these individuals but the others, we told them try not to go out irrigating but they keep on going, by doing this you folks are prolonging the strike, they seem not to be worried about it.

Q. But this Harlow Wright, Mike Nelson and James Backland, did you or any member of this unit inform these individuals not to irrigate at any time? A. No.

Q. But you did receive information that they were irrigating? A. Yes, time and time again.

Q. About how many times?

A. Ever since the strike started, they have been irrigating about a month.

Q. Don't you think the proper thing, Yamauchi, would be to contact these individuals and ask them not to do it?

A. When the boys approached them I understand, are you irrigating or are you going home, they said I'm going to irrigate.

Q. Who gave you that information?

A. Somebody.

266-267-268-269

Statement of Mac Masato Yamauchi

Page 8

Q. That they did tell him that?

A. I think so.

Q. You think this information that you received, you consider that reliable?

A. I got this from the boys.

Plaintiffs' Exhibit No. 31—(Continued)

Q. Who was this boy?

A. I don't know from whom I heard that remark.

Q. To make matters short, as a matter of fact you don't like to divulge the individual who told you that? A. No.

Q. On election day, November 5, 1946, word had been passed to various members of the unit to report to headquarters the following morning, is that right? A. No, not from me.

Q. You know if any instructions had been given to the men to inform them to report? A. No.

Q. Maybe you don't quite understand me, on election day information was given various members to report at the union hall about six o'clock?

A. No, that was before election day, we told them we were going to have a meeting.

Ass't Chief Freitas to William Seabury:

Q. Seabury you were informed, what time was it?

A. My statement was my son told me election day when I got home to report the following morning.

Q. Your son tell you who gave you that information?

A. He said one picket chairman, but I don't know what picket chairman.

Ass't Chief Freitas questioning Mac Yamauchi:

Q. Why I asked that, various individuals stated that you had passed to them to report the following

Plaintiffs' Exhibit No. 31—(Continued)

day for orders they had no knowledge, I was just trying to bring that out.

Q. Now that morning of the 6th when you had these various men at the hall there, how many did you estimate were there?

A. I don't know about seventy-five to a hundred I think.

Q. How many cars all told?

A. I don't know, about twelve I think, eight or twelve.

269-270-271

Statement of Mac Masato Yamauchi

Page 9

Q. How many cars did you detail to Olowalu?

A. Eight I think.

Q. Is it possible could be more but you're not sure?

A. No, Moir got hold of the fisherman and pulled their spear out of their car. Moir asked them where they going, we going fishing, and he said fishing be damned and pulled the spear and took off his neck-tie and wanted to fight, Captain Ontai was there but didn't say a word, according to these boys. Buchanan was there, and he told Moir better leave the spear there before you get in trouble.

Q. Where did this take place?

A. Near Olowalu, these boys were coming back, they went out fishing, it was windy so they were coming back, this is our diving crew, they go out every morning.

Q. How many cars did you send elsewhere?

Plaintiffs' Exhibit No. 31—(Continued)

A. Two or four.

Q. Where did you send the two?

A. Two up in Lahainaluna District one out in crater district.

Ass't Chief Freitas questioning Seabury:

Q. Mr. Seabury how many cars went to the Olowalu District? A. Ten cars.

Q. Three cars park by Olowalu Store and three went to field four and five and three went checking further on up towards Wailuku? A. Yes.

Q. What you call that area there?

A. That's still Olowalu yet.

Q. The field over there? A. Fourteen.

Q. One patrol was patrolling? A. Yes.

Q. That made a total of ten cars is that right?

A. Yes.

Ass't Chief Freitas questioning Mac Yamauchi:

Q. Is that about the right amount Mac?

A. I don't know, I thought it was eight.

Q. Don't you check, don't you keep a record of what you do?

A. I just tell them go, I don't know.

272-273-274

Statement of Mac Masato Yamauchi Page 10

William Seabury interrupts:

That's right he say, he don't know.

Q. Maybe I thought you keep a record of what you send? A. No.

Captain Seabury leaves room and re-enters with Roque Omisol:

Plaintiffs' Exhibit No. 31—(Continued)

Q. Mac, do you know that man sitting there?
(Indicating Roque Omisol.) A. Yes.

Q. What's his name?

A. I call him Shorty.

Ass't Chief Freitas questioning Roque Omisol:

Q. Roque, yesterday morning you go meeting?

A. Headquarters office.

Q. Before you go inside car go Olowalu you see Mac over there?

A. Yes, he was in front with us.

Q. What Mac tell all you men?

A. Tell us go some place and look around maybe somebody hanawai.

Q. Suppose you see somebody hanawai what you suppose to do? A. Give him, send him home.

Q. Suppose this man no go home what you suppose to do?

A. Suppose he push you back you get right to give him licking.

Q. How many stop around headquarters when Mac made this statement? A. Around fifty.

Q. What he suppose to do suppose no go home?

A. If he give us action push back, lick him.

Q. He speak hemmo clothes?

A. Hemmo clothes, make naked.

Q. This is the man sitting here said that?
(Pointing to Mac.) A. Yes.

Toyama enters room:

Ass't Chief Freitas questioning Toyama:

Q. Toyama, the police have already obtained statement from you is that right? A. Yes.

Plaintiffs' Exhibit No. 31—(Continued)

Q. In your statement you inform the police how you reported to headquarters yesterday morning?

A. Yes.

272-275-276

Statement of Mac Masato Yamauchi Page 11

Q. Instructions were given as to what you men were to do in preventing different overseers from irrigating?

A. Yes.

Q. Who gave you those instructions?

A. Yamauchi.

Q. Is this the Yamauchi? (Pointing to Mac Yamauchi.)

A. Yes.

Q. And all you said in your statement is the same now?

A. Yes.

Ass't Chief Freitas to Yamauchi:

Q. Yamauchi, you care to ask any question of Toyama or Roque?

A. No.

Q. What they have said is that the truth?

A. I don't know what Toyama said.

Q. But Roque here?

A. Give him licking I didn't say.

Q. What did you say?

A. If they don't want to go home to take off their clothes. I never tell them to give them a licking.

Q. You told them to take off their clothes, you tell them what to do with their clothes?

A. No.

Q. What was the object of having the men take off their clothes?

Plaintiffs' Exhibit No. 31—(Continued)

A. Make them embarrassing, as far as we weren't looking for trouble.

Q. But you did tell them to go out and prevent them from irrigating?

A. That's right we told them.

Q. You told them that if they refuse that they were to do what?

A. Told them take off their clothes.

Q. What else you tell them?

A. That's all.

Q. Did you tell them that if the men give action if they wanted action?

A. I told them if they fight against you use your own judgment.

Q. Did you give them any other further instructions? A. No.

Roque Omisol and K. Toyama leaves room:

276-277-288

Statement of Mac Masato Yamauchi Page 12

Q. Mr. Yamauchi, don't you think you used poor judgment in sending these men out with those instructions?

A. Well, maybe poor demonstration, but really but they were making a monkey out of us.

Q. What you did yesterday in detailing these men what might consider revenge or retaliation?

A. Its no revenge or anything of that sort, just want to stop the irrigation.

Q. You think it would be proper to first contact these individuals before reverting to violence?

Plaintiffs' Exhibit No. 31—(Continued)

A. We did, for instance the other one, you see they approached the man, the personnel director, if you folks touch me you won't go home.

Q. When I say about approaching first, I mean these three fellows that were attacked yesterday, Wright, Nelson and Backland, you already have stated that they weren't informed at any time in the past?

A. They weren't told.

Q. Don't you think the proper procedure was first contact them and ask them not to do?

A. We took it for granted that they wouldn't listen to us.

Q. Don't you consider that it was poor judgment?

A. Maybe it was poor judgment.

Q. Considering the fact that you are a chairman of the Strategy Committee would you consider that good strategy?

A. Well, maybe I made a mistake.

Q. As a matter of fact Yamauchi, it wasn't necessary to send so many out to stop these fellows from irrigating isn't that right?

A. Well, maybe.

Q. From your own statement Mr. Yamauchi members of the union have approached you and complained of these irrigation is that right?

A. Yes.

Q. And they have complained from time to time?

A. That's right.

Q. How did you arrive at this idea to take action yesterday morning, November 6th?

A. It just arrived, the complaints was coming to me whole month.

Plaintiffs' Exhibit No. 31—(Continued)

Q. Did you receive all these complaints from the members of the union sort of forced you to take action is that correct? A. That's correct.

279-280-281.

Statement of Mac Yamauchi

Page 13

Q. When these men left the union hall yesterday morning, what did you do?

A. I was in the office, I went home to do my home work and I came back to the office.

Q. When did you first find out as to what took place up in Olowalu?

A. When I came back from my home.

Q. What did you find out?

A. That it was that they beat this guy up. I told them why did you guys beat him up, this guy wanted to swing hoe at us, they had to do it.

Q. Who told you that? A. One boy.

Q. Who? A. Fujiwara.

Q. Did he say which individual?

A. Both of them.

Q. Now what did they have to say in regard to Wright, did they tell you just what happened between Wright and themselves?

A. Well they told me that they gave him a licking, that's all the information I got.

Q. Did Mr. Wright tried to use a hoe on them?

A. I don't know.

Q. You did not receive any information along those line? A. No.

Plaintiffs' Exhibit No. 31—(Continued)

Q. Were they any other demonstration any place else yesterday morning? A. No.

Q. Those other cars that you sent out did they contact different overseers in different canefield and tell them what to do?

A. One of them approached the personnel director. He was watching two Filipinos that were irrigating. When they approached him who is irrigating, he said, "if you folks looking for anything, you folks ever touch me, you folks not going home" so they just came home.

Q. The other individuals in other cars in other localities, what did they have to report back?

A. They didn't see any irrigating on the other side.

Q. Any member of the union report regarding H. Robinson irrigating? A. No.

Q. Any member reported about Sakamoto irrigating? A. No.

281-282-283-284

Statement of Mac Yamauchi

Page 14

Q. How about Joe Garcia and Louis Garcia?

A. That report came from Puukolii, they didn't go out irrigating that's the report I had.

Q. Didn't you send a bunch of men to Puukolii?

A. No.

Q. Weren't there sort of a demonstration at Puukolii?

A. Those picket chairman, they picket the roll call I believe.

Plaintiffs' Exhibit No. 31—(Continued)

Q. In that demonstration at Puukolii, are those individuals all living at the Puukolii area?

A. That's right.

Q. All these various areas have their own picket chairman?

A. That's right.

Q. These so-called ten cars that were sent to Olowalu, do you consider that picketing?

A. No.

Q. What's that type of strategy in your circle, when you send individuals out?

A. To stop the irrigation.

Q. That's not considered picketing?

A. No.

Q. Main issue is to stop it?

A. That's right.

Q. Your instructions to the men if they refuse to heed their warning irrigating that they were to take action towards them is that right?

A. Not action, I told them to use their own judgment.

Q. And if they didn't do it they were to strip their clothes?

A. That's right.

Q. Mr. Yamauchi, has it ever occurred to you that these men who are irrigating may have a weapon and when union members approach them the way they did that somebody might happen to get killed?

A. I didn't have that idea.

Q. Is it possible though?

A. Well, I don't know if its possible, I didn't have no idea that they were carrying a weapon, only maybe police officers.

Plaintiffs' Exhibit No. 31—(Continued)

Q. Mr. Rodrigues sort of insisted that he had a weapon, is that correct? A. Yes.

Q. You are acquainted with the rights of self defense? A. Yes.

284-285-286

Statement of Mac Yamauchi

Page 15

Q. You know that a man has perfect right to defend himself? A. Yes.

Q. And you feel now as to the instructions you gave these men yesterday to be improper?

A. Perhaps.

Q. What do you mean by perhaps?

A. Maybe that's a mistake, if you take it in your—if you think that I made a mistake perhaps I made a mistake.

Q. You know for a fact that violence was committed on these individuals irrigating the fields?

A. Yes.

Q. You have been informed about these men being beaten up? A. Yes.

Q. Do you consider it proper for the members of your union to go into private property and beat up people, take the law into their hands?

A. I don't think its proper but they were making monkeys of us.

Q. Aren't there other legal ways that you can do without reverting to violence?

A. I don't know, perhaps you don't understand the situation in Lahaina. These haoles over there they making monkeys out of us.

Plaintiffs' Exhibit No. 31—(Continued)

Q. In what way? A. In every respect.

Q. What for instance?

A. You see, for instance, take a man like Moir, I give you example, where we try to do the best for the community, there's a man in the hospital in very serious condition, he ask for blood transfusion, I had the same type of blood, they asked me for my blood. I'm willing to give my blood. I went to the hospital and when I came back moving the house after the tidal wave, move 8 x 12 when we move these things we need strength and I went back to work after the blood transfusion. I felt kind of tired and called on my boss. I told him I feel tired if I can go home and take rest, they may call for another transfusion, I like to be prepared, if I can be excused for the day. When I called up his home he wasn't there. I call up Main Office, he was having conversation with Moir, he said I better speak to Moir. I told Mr. Moir I just came back from blood transfusion I want to know if its ok to go home. He said you giving blood to someone else is none of the business of the plantation. I told him its employee of the plantation he's in a critical condition, I just wanted to help him. He said again, you giving blood to someone else is none of the business of the plantation. I wanted to hang up. I look into record of the hospital see if they are [illegible] old system. Old system the hospital will pay the blood donor. From where is that money coming from, I told him if that money is coming from that

Plaintiffs' Exhibit No. 31—(Continued)

poor man I don't expect any penny from that, that's the regulation of the hospital. He told me you can go and rest, those things, it hurts, I mean, I have been in the boy scout movement for twenty-two years, and I don't want to create trouble, and they

286-287-288-289-290-291

Statement of Mac Masato Yamauchi Page 17
make a monkey of us and it hurts me inside. Community Christmas tree, we want to cooperate with the plantation they gave us nothing.

Q. This is the thing, when you speak of they, you mean just Moir? A. It's the plantation.

Q. Isn't the man in charge more or less makes the decisions? A. He have the whole say.

Q. For Mr. Moir's misdeeds, why did you hold it against other individuals?

A. The other guys they same thing. They follow the manager, they didn't listen to what we say.

Q. From what you tell me, don't you think they are in fear of their jobs that they have to carry out their instructions?

A. They are afraid of Moir.

Q. Why do you hold it against those individuals?

A. I got to stop them somehow.

Q. Have you any information as to Mr. Moir irrigating himself?

A. He has, we have reports coming in that he was irrigating with the Assistant Manager.

Q. But I am inclined to believe that you are a little off on your racial business Mac, you have

Plaintiffs' Exhibit No. 31—(Continued)

your own feelings, maybe you are correct in feeling bitter towards Mr. Moir from past incidents, but I don't think you should take it out on the rest small fry, after all just like you they working for a living.

A. . . .

Q. I have also been informed from different union men I have interviewed yesterday and this morning, that they have been informed that the strike is far from being settled, is that correct?

A. No.

Q. These individuals have informed me of that?

A. They can read the papers and radio, they are coming down to negotiating.

Q. I mean these they also informed me that the union in Lahaina have informed them also not to believe what they hear over the radio or read in the newspapers?

A. Maybe they were informed, yes.

Q. Don't you think that's poor judgment, also you have enough education to know from the newspapers are truthful and some of them at times may not have true ideas, but as a rule you have found them to be very fair in the past?

A. Well some papers.

291-292-293-294

Statement of Mac Yamauchi

Page 17

Q. You also observed ad in the papers on election day, where the ILWU had a full page ad that they were ready to go back to work and settle the

Plaintiffs' Exhibit No. 31—(Continued)

other differences but the sugar industry refused to do that? A. That's right.

Q. Would you say that ad isn't a correct one?

A. I don't know if it's correct, but whatever we have from the office we take but not from the newspaper.

Q. The information you received doesn't it indicate that the strike is just about settled?

A. Well, we didn't have any reports lately.

Q. The main union office in Honolulu haven't been keeping your unit posted?

A. I didn't say that, as far as the information is concerned the industry is setting down not like the way they just started.

Q. Well it seems to me that the men should be informed from time to time as to the results of this negotiation, which would prevent lots of ill feelings or any crimes of violence, don't you think so?

A. That's right.

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Concluded November 7, 1946 at 3:35 p.m.

I have read the foregoing 17 pages of this statement and have had an opportunity to make corrections thereon. I know the contents thereof to be true and correct to the best of my knowledge and belief.

/s/ MAC M. YAMAUCHI.

November 7, 1946 at 7:30 p.m.

Witnessed by:

/s/ [Illegible].

Miss Lewis: What is this you want, Mrs. Bouslog?

Mrs. Bouslog: If you will stipulate that these clippings represent a report of this incident, which shows that in a gambling raid involving 40 people, five police officers were beaten and charges placed against the so-called attackers, alleged attackers, for interfering with police officers in the enforcement of their duty, and that the bail was set at \$25 and \$50.

Mr. Crockett: If your Honor please——

Judge Biggs: It can be admitted only by stipulation. Do you object?

Mr. Crockett: I do.

Judge Biggs: Sustained.

Mr. Crockett: I don't know a thing about it.

Judge Biggs: Sustained.

Mrs. Bouslog: Then I will ask the Court's permission to show on Saturday, since the report has just come to my attention, that there are other incidents when non-union people are involved in serious difficulties where very minor misdemeanor charges are placed against them.

Judge Biggs: Mrs. Bouslog, I don't believe that you can prove that issue except by going into a very long course of proof. I think that you would have to prove proceedings in the various courts of Hawaii, and it would probably take a very [480] long time. That, of course, is immaterial. The length of time is immaterial. And we are not ruling on that issue. But it seems to me that what you

propose to show is so remote from pertinency that it would not be properly received by this Court.

Mrs. Bouslog: Your Honor, may I be heard?

Judge Biggs: Yes, you may be heard.

Mrs. Bouslog: The plaintiffs' in their petition allege that they are unlawfully, wilfully, and purposely discriminated against because of their membership in the union and because of activities growing out of labor disputes. The defendants' entire case yesterday brought out or asked the officers whether there were any other offenses to their knowledge which would warrant a serious charge. In other words, everybody is peaceful except the persons who engaged in labor disputes. We would like to offer proof of this particular incident because it involves forty people, five people were severely beaten, they were engaged in an unlawful act, in the first place, which certainly is a contrast to the facts which are before your Honors.

Judge Biggs: I think the Court went too far yesterday in allowing the statements of the police officers. We received it subject to a motion to strike. The statements to the effect that Maui was a peaceful place and that there were no incidents prior to these which warranted the employment of this statute. I have very serious doubt as to whether or not that testimony [481] was competent. But it would seem to me that if you are going to proceed to make proof of the actual status of the handling of criminal cases, misdemeanors, in the Territory of Hawaii, that you would have to do it not by proof

of isolated instances, this particular situation, this one to which you refer, but it would have to be more or less done by a presentation of general statistics.

Miss Lewis: If the Court please, I don't know whether the record shows that Mrs. Bouslog is talking about something that happened here in Honolulu.

Judge Biggs: I think it does. She speaks of a raid made by—what is it—the vice squad.

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: On gambling and how it is handled. That is very remote indeed, Mrs. Bouslog. I think that we would not be justified in receiving testimony on that issue. Let me see if my brethren agree with me, however. We think it is too remote, Mrs. Bouslog.

Mrs. Bouslog: Yes, your Honor. Your Honors, subject to the exhibits which have been offered and are to be included, to be supplied as soon as they are available, as soon as we can possibly get them into the records of the Court, we have completed our rebuttal and have completed our case.

Judge Biggs: I might say, in my opinion, speaking only for myself, that the expression of the police officer respecting conditions on Maui is opinion evidence, and is [482] entitled to no more and no less weight than opinion evidence, in case it is actually pertinent. I am not sure that our ruling in respect to this prior matter is proper. It is our opinion that proof of the treatment of isolated instances, the one to which you refer, is not sufficiently close to the

relevant issues in this case to be admissible. I think that probably covers it. I don't know that I can make it any clearer.

Mrs. Bouslog: I understand, your Honor.

Judge Biggs: I beg your pardon?

Mrs. Bouslog: I say I understand what the Court's ruling is, your Honor, and for that reason we are not asking that the Court hear any further witnesses.

Judge Biggs: All right. About the exhibits.

Mrs. Bouslog: What exhibits?

Judge Biggs: I am afraid I didn't follow you. I was thinking about this other matter.

Mrs. Bouslog: The numbers have been reserved for several exhibits, which I believe the defendants have stipulated may go in subject to their objections as to materiality. We understand, of course, that the exhibit only shows what it purports to show, and that they are not bound by it.

Judge Biggs: Any exhibit speaks for itself, to the extent it speaks. We are all familiar with that rule.

Mrs. Bouslog: Yes, your Honor. One of the exhibits [483] which I have is the list of Filipino voters of the County of Maui, which is in the process of preparation. All the exhibits which the defendants have not seen I will turn over to the clerk.

Judge Biggs: Is that course satisfactory?

Miss Lewis: Yes.

Judge Biggs: All of that should be cleared up prior to the argument on Saturday, as far as it can be.

Mrs. Bouslog: So far as it can be.

Judge Biggs: We realize, of course, there is a good deal here. We should like to have everything, as far as possible, in order by Saturday morning, in case there be necessity for it.

Does that complete the taking of testimony in connection with the cases outside of this exhibit to which you refer?

Mrs. Bouslog: Yes.

Mr. Crockett: That is all for the defendants.

Judge Biggs: Very well then. We will hear the argument, as we said yesterday, starting at 10 o'clock Saturday.

Miss Lewis: May I ask the Court.

Judge Biggs: Yes.

Miss Lewis: I think the Court referred to procuring the record. Is the Court ordering the record?

Judge Biggs: I think we should have the record. It may not be ready by that time. I think you can argue, perhaps, [484] without having the record before you.

Miss Lewis: I understood it would not be ready by that time.

Judge Biggs: Are we going to order a record before disposing of the case?

Miss Lewis: I thought the Court said something about a transcript of the record, and I didn't understand. Was that a transcript of all the testimony?

Judge Biggs: We cannot possibly have that by Saturday. What I thought would be the case would be to hear argument from the parties, restricted to the salient, main issues, on Saturday.

Miss Lewis: I understand that, your Honor.

Judge Biggs: And that after the record had been prepared we would then set a time for briefs, with some elasticity. After all, counsel are adult in experience. I don't know that we need to put an actual date on it or not. Mrs. Bouslog's brief would come first, and her request for findings and conclusions. Yours would be second. And then she would have an opportunity for reply brief, and by that time we should have the case ready to be disposed of by this Court.

Perhaps I misunderstood your question. Was your question directed as to who should pay for the record?

Miss Lewis: Yes, your Honor. Who is actually ordering the record?

Judge Biggs: You are going to order a record, aren't [485] you? How are you going to be able to prepare your brief without one?

Miss Lewis: Now that I understand the situation, let us talk to opposing counsel, before we meet again, about it.

Judge Biggs: Very well.

Miss Lewis: That is what I wanted to find out.

Judge Biggs: Very well. The Court would have to have a copy of the record. There are three of us, you know, and five of you. I don't think you can very well get along on one copy of the record. We have no desire to cause the parties or the United States to incur unnecessary expense, but there are limits, after all, which are geographical, you know.

Judge Metzger is here, Judge Harris is in San Francisco, and I am in Wilmington, Delaware, or Philadelphia. You have a rather considerable record here. I must say I can see no reason why the exhibits should be written in as part of the record. They should remain separate. The transcript should embrace the argument and the testimony in the usual way.

Suppose counsel discuss that and you can inform us on Saturday.

Miss Lewis: Yes. Now that I understand the status, we can proceed.

Judge Biggs: Until 10 o'clock on Saturday, then, the Court will stand adjourned.

(April 27, 1948, 11:25 a.m. Court took an adjournment to 10 a.m., Saturday, May 1, 1948.) [486]

[Endorsed]: Filed June 9, 1948 U.S.D.C.

[Endorsed]: Filed July 23, 1948 U.S.C.A.

In the United States District Court for the
Territory of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, et al.,
Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., Individually and
as Attorney General of the Territory of Ha-
waii, et al.,

Defendants.

Civil No. 836

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, et al.,
Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., Individually and
as Attorney General of the Territory of Ha-
waii, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

In the above-entitled cases, held in the U. S.
District Court on May 1, 1948, at 10:05 o'clock a.m.,
Before: John Biggs, Jr.,

Judge, U. S. Circuit Court, Wilmington,
Delaware;

George B. Harris,

Judge, U. S. District Court, San Francisco,
California;

Delbert E. Metzger,

Judge, U. S. District Court, Honolulu,
T. H.

Appearances:

HARRIET BOUSLOG,

Appearing for Plaintiffs;

MYER C. SYMONDS, ESQ.,

Appearing for Plaintiffs;

RHODA V. LEWIS,

Assistant Attorney General,

Territory of Hawaii,

Appearing for Defendants;

WENDELL F. CROCKETT, ESQ.,

Deputy County Attorney,

County of Maui, T. H.,

Appearing for Defendants.

The Clerk: Civil No. 828, International Longshoremen's and Warehousemen's Union versus Walter D. Ackerman, and Civil No. 836, International Longshoremen's and Warehousemen's Union versus Walter D. Ackerman; cases called for argument.

Judge Biggs: Whenever you are ready.

Mrs. Bouslog: Your Honors, before we begin the argument, there are certain matters in connection with the exhibits and certain matters in connec-

tion with the motion to strike—what is your Honors' pleasure, that they be deferred until after?

Judge Biggs: Well, what we desire today is an argument going to the merits.

Mrs. Bouslog: I understand. But I mean certain very technical and formal matters of clearing up the record on the question of the exhibits.

Judge Biggs: Well, I think you had better proceed to that question first.

Mrs. Bouslog: I have here a letter signed by the Secretary of the Maui Chamber of Commerce, and attached to it a copy of the resolution, which is one of the exhibits which the Plaintiff offered, Exhibit No. 8.

[Exhibit No. 8 is set out on pages 1231 to 1234.]

Judge Biggs: It may be admitted.

Mrs. Bouslog: Also a part of Exhibit No. 8 is a certificate of the Secretary of the Junior Chamber of Commerce which unfortunately has not yet been received, but I will ask the Court for permission to furnish it at a later date after Mr. Crockett has examined it.

Judge Biggs: Very well. It may then be admitted.

Mrs. Bouslog: I also have a certificate of the Treasurer of the Territory of Hawaii that the two provisions of the articles of the Oriental Benevolent Association are the same as those on file.

Judge Biggs: Very well. It may admitted. All

of this, of course, subject to the usual—does the latter thing have a number? I think it does.

Mrs. Bouslog: Yes, Plaintiff's Exhibit No. 30.

Judge Biggs: And No. 30, Mr. Thompson.

Mrs. Bouslog: There was also offered as an exhibit, I believe that was part of Exhibit 18, the Hawaiian Sugar Planters Association, census of Hawaiian sugar plantations as of June 30, 1947. I have procured extra copies so that I have one for each member of the Court, if the Court so desires.

Judge Biggs: Very well. We will be glad to have it.

The Clerk: Plaintiffs' Exhibit No. 32.

(The document referred to was received in evidence as "Plaintiffs' Exhibit No. 32.")

[Printer's Note]: Exhibit 32 set out beginning on page 1740 was previously marked Exhibit 30.

Judge Biggs: Will you just pass them up, please?

Mrs. Bouslog: Now, Plaintiffs' Exhibit 22. I believe there were two parts of 22. The first was a certificate of [2*] the Clerk of Maui County showing the number of registered Filipino voters. Plaintiff also asks permission to file a list of Filipino, actual names of Filipino registered voters. Here is Plaintiffs' Exhibit No. 22-B. Mr. Crockett has not yet had a chance to examine it. It is a list of Filipino voters checked on the actual register of voters of Maui County.

Judge Biggs: So it actually shows them to be members of Filipino nationality?

* Page numbering appearing at top of page of original certified Transcript of Record.

Mrs. Bouslog: No, your Honor. It shows that there are two parts. One, persons definitely known to be Filipino; another, a question mark showing that they probably are. Mr. Crockett, do you want to——

Judge Biggs: Let Mr. Crockett examine it, please. (Mrs. Bouslog hands a large envelope to Mr. Crockett.)

Mrs. Bouslog: Now, your Honors, I discovered that in the showing no number was assigned to the Plaintiff's films, no exhibit number. I suggest that you assign to them Exhibit No. 32.

Judge Biggs: That would be the last number.

The Clerk: Exhibit No. 33.

(The films referred to were received in evidence as "Plaintiffs' Exhibit No. 33.")

Mrs. Bouslog: What was 32?

The Clerk. The extra sheet.

Mrs. Bouslog: I see. [3]

Judge Biggs: All the exhibits can be checked at some future time, and if there are any extra numbers, why it is easy to clear it up.

Mrs. Bouslog: I might say in respect to the transcript of the record before the Maui Circuit Court on the Grand Jury challenge that there is at present only one copy of that transcript in the record. I think that after briefs are submitted and proposed findings of fact that the parties can lend to the Court so that each Court will have a copy——

Judge Biggs: I think that one copy will be sufficient.

Mrs. Bouslog: I have in the process of preparation, and I will furnish the Defendants and furnish the Court, if they have no objection, with a complete index, paged index of the transcript. It is not now indexed. I think it will facilitate Counsel's work, as well as the Court's work. It has been made up but it has not yet been typed.

Judge Biggs: Is that all, Mrs. Bouslog?

Mrs. Bouslog: I think that's all.

Judge Biggs: All right. Miss Lewis?

Miss Lewis: I have a further matter pertaining to exhibits, if the Court would hear me.

Judge Biggs: Yes.

Miss Lewis: Exhibit 25 of the Plaintiff—all of the exhibits on the Grand Jury challenging—I think there was a little misunderstanding and this is just a matter of clearing [4] the record. On looking through the exhibits I noticed some that were merely marked in Judge Cristy's proceeding for identification but not received. They were included there. And I want the record to show that we have an additional objection, that is, to the general objections made at the beginning of the proceedings, to those exhibits that were merely marked for identification. They are irrelevant, immaterial, and I can name them off if the Court wishes.

Judge Biggs: Will it appear on the exhibit as admitted here that the particular paper or document or whatever it was that it was simply marked for identification before Judge Cristy?

Miss Lewis: Yes, it will. The system there is

that they use one tag for identification and another tag when it is received.

Judge Biggs: I see. Well, then, I doubt if you need to read it into the record. If you will put your list, if you have your list there, you may hand it to the Clerk and the Clerk will mark it part of the record by incorporation.

Miss Lewis: Very well. Another matter that possibly needs attention is that the Prosecution's exhibits in that Grand Jury challenge were produced by Mr. Cockett and the Plaintiff called him and marked for identification 14 and 16. And I find they have been introduced under Plaintiffs' numbers, actually, that is to say, marked under Plaintiffs' numbers. [5] Actually, of course, those are Defendants' exhibits. I submit that it would be better if they were given Defendants' exhibit numbers.

Judge Biggs: It seems to me that would be the case. Have you any comment, Mrs. Bouslog?

Mrs. Bouslog: Except, your Honor, the Plaintiff offered and intended to put into the record the complete records before Judge Cristy, which would, of course, include the Court's exhibits and the Defendant's exhibits. And that is the reason why we offer the whole record. It makes no difference.

Judge Biggs: I suggest that those particular items be marked as the Court's exhibits. We will assume responsibility for them.

Miss Lewis: That would be what has been marked Plaintiffs' Exhibit 14 and Plaintiffs' Exhibit 16.

Judge Biggs: It would be "C-1" and "C-2."

Miss Lewis: Pardon?

Judge Biggs: It would be the Court's 1 and 2.

(The documents previously marked "Plaintiffs' Exhibits 14 and 16 were re-marked as Court's Exhibits 1 and 2.")

COURT'S EXHIBIT No. 1

In the Circuit Court of the Second Circuit,
Territory of Hawaii—At Chambers

In the Matter of Selecting Lists of Persons To
Serve as Jurors During the Year A. D.,
1947

REPORT OF THE JURY COMMISSIONERS, AND LISTS OF NAMES OF PERSONS SELECTED TO SERVE AS JURORS IN AND FOR THE SECOND CIRCUIT OF THE TERRITORY OF HAWAII FOR THE YEAR A. D., 1947

To the Honorable Cable A. Wirtz, Judge of the
Circuit Court of the Second Circuit, Territory
of Hawaii:

We, the undersigned Jury Commissioners, appointed by Your Honor on the 18th day of June, A. D., 1946, to select and list the names of persons to serve as Jurors in the Circuit Court of the Second Circuit, Territory of Hawaii, for the year, A. D., 1947, beg leave to report as follows:

That between the 18th day of June, A. D., 1946, and the 12th day of December, A. D., 1946, we

proceeded to select and list from the citizens, voters and residents of the several precincts in the said Circuit, the names of fifty (50) persons who, in our opinions, are qualified to serve as Grand Jurors, and the names of One Hundred (100) persons who are so qualified to serve as Trial Jurors, as required by law; that we have not, except where it was necessary, selected and listed the name of any person who has served as a Juror within one year; and that the names of such persons selected and listed and so qualified to serve as Grand and Trial Jurors, as aforesaid, are as follows:

GRAND JURORS

No.	Name	Precinct	Residence
1.	David P. Eldredge.....	1	Lanai
2.	Toshio Onuma	1	Lanai
3.	Alfred S. Burns.....	2	Honolua
4.	Manuel Correia, Jr.....	3	Mala
5.	Roy Tatsumi Ito.....	3	Mala
6.	Edward S. Bowmer.....	3	Mala
7.	Ralph O. Cornwell.....	4	Kam 4th, Lahaina
8.	Yong Kam Chew.....	4	Kam 4th, Lahaina
9.	Ray M. Allen.....	6	Wailuku Elementary
10.	Wai Ken Tom.....	6	Wailuku Elementary
11.	Allan H. Ezell.....	6	Wailuku Elementary
12.	Louis Sequeira.....	7	Iao School
13.	Winford W. Percy.....	7	Iao School
14.	Shosaku Nakamoto	7	Iao School
15.	Irving Maeda	8	Piihana
16.	Joseph H. Trask.....	8	Piihana
17.	Ernest Rezents	8	Piihana
18.	Eugene K. Ayers.....	9	Papohaku
19.	Paul A. Haygood.....	9	Papohaku
20.	Charles H. Saka.....	10	Waihee
21.	Glenn H. Fredholm.....	12	Kahului
22.	H. S. Peterson.....	12	Kahului
23.	Manuel De Ponte.....	12	Kahului
24.	Frank W. Broadbent.....	13	Puunene
25.	Masao Mac Ajifu.....	13	Puunene
26.	Mau Hin Edward Alu.....	13	Puunene
27.	Jack Costa	13	Puunene

GRAND JURORS (Continued)

No.	Name	Precinct	Residence
29.	E. Stanley Elmore.....	13	Puunene
28.	James M. Fleming.....	14	Spreckelsville
30.	Albert D. Waterhouse.....	15	Lower Paia
31.	Manuel Feiteira	15	Lower Paia
32.	Andrew Moodie	16	Upper Paia
33.	Robert P. Bruce.....	16	Upper Paia
34.	H. W. English.....	16	Upper Paia
35.	Gottlieb Z. Coleman.....	16	Upper Paia
36.	Edmund Nunes	17	Upper Paia
37.	Richard H. Baldwin.....	18	Makawao
38.	Anthony A. Tam.....	18	Makawao
39.	Walter W. Holt.....	19	Haiku
40.	Edwin K. Muroki.....	19	Haiku
41.	John Plunkett	21	Keanae
42.	Albert G. Simpson	23	Hana
43.	Edward H. Baldwin.....	26	Honuaula
44.	Henry S. S. Fong.....	27	Keokea
45.	Charles Goodness	27	Keokea
46.	Charles E. Thompson.....	28	Kihei
47.	Stanley C. Friel.....	30	Pukoo
48.	Charles E. Morris.....	31	Kaunakakai
49.	Kenneth Auld	32	Hoolehua
50.	Paul R. Reinhart.....	33	Maunaloa

TRIAL JURORS

No.	Name	Precinct	Residence
1.	C. M. Marques.....	1	Lanai
2.	Rudolph A. Y. Wong.....	1	Lanai
3.	Henry B. Caldwell.....	1	Lanai
4.	Henry K. Goshi.....	1	Lanai
5.	Joseph A. Verret.....	1	Lanai
6.	David A. Fleming.....	2	Honolua
7.	Francis K. Izumi.....	3	Mala
8.	John Nedermeyer	3	Mala
9.	Charles W. Ashdown.....	3	Mala
10.	Marion Soares	3	Mala
11.	Masaki Nakamura	3	Mala
12.	Bruce L. Fleming.....	3	Mala
13.	Samuel Akana	4	Kam 4th, Lahaina
14.	George Allan Freeland.....	4	Kam 4th, Lahaina
15.	Paul F. Hirashima.....	4	Kam 4th, Lahaina
16.	Jack E. Voekrodt..... (4)	4	Kam 4th Lahaina
17.	Kwai Goo	5	Olowalu
18.	Albert Rego	6	Wailuku Elementary
19.	Herbert A. Hjorth.....	6	Wailuku Elementary

TRIAL JURORS (Continued)

No.	Name	Precinct	Residence
20.	John Nunes	6	Wailuku Elementary
21.	John Denison Jenkins.....	6	Wailuku Elementary
22.	James T. Murakami.....	6	Wailuku Elementary
23.	Ernest G. Paschoal.....	7	Iao School
24.	Theodore C. Harris.....	7	Iao School
25.	Andrew Pestana	7	Iao School
26.	E. H. Takakura.....	7	Iao School
27.	John G. Duarte.....	7	Iao School
28.	Herbert H. Chung.....	7	Iao School
29.	Norman H. Buxton.....	7	Iao School
30.	Frank Dolim	8	Piihana
31.	Howard Barrows	8	Piihana
32.	Bernard H. Tokunaga.....	8	Piihana
33.	Donald H. Tokunaga.....	8	Piihana
34.	Manuel C. Ferreira.....	8	Piihana
35.	Walter Young	8	Piihana
36.	Donald J. Huxtable.....	9	Papohaku
37.	Charles L. Clark.....	9	Papohaku
38.	Shigeru Hamasaki	9	Papohaku
39.	Kaneo Kishimoto.....	10	Waihee
40.	George N. Paresa.....	10	Waihee
41.	Lot Carey Lane.....(10)	11	Kahakuloa
42.	Robert L. Wood.....	12	Kahului
43.	Donald Dease.....	12	Kahului
44.	Felix C. Osorno.....	12	Kahului
45.	Herbert Y. Sameshima.....	12	Kahului
46.	William Bissen	12	Kahului
47.	Wilbur K. Watkins, Jr.....	13	Puunene
48.	William Harvey	13	Puunene
49.	Kokuichi Omura	13	Puunene
50.	Charles C. Young	(7) 13	Puunene
51.	Harry F. M. Dove	(7) 13	Puunene
52.	E. L. Harker.....(27)	13	Puunene
53.	Frank Munoz	(7) 13	Puunene
54.	Herbert Rodrigues	(6) 13	Puunene
55.	Robt. G. von Tempsky, Jr. (7)	13	Puunene
56.	William Lanquist	14	Spreckelsville
57.	William S. K. Brandt.....	14	Spreckelsville
58.	Russell W. Pinfold.....(7)	14	Spreckelsville
59.	Nobuichi Kobayashi	15	Lower Paia
60.	Charles Cramer	15	Lower Paia
61.	Francis M. Takakura.....	15	Lower Paia
62.	Benjamin J. Ambrose.....	15	Lower Paia
63.	G. N. T. Enemoto.....	16	Upper Paia
64.	James K. Nashiwa.....	16	Upper Paia
65.	Tony Molina	16	Upper Paia
66.	William H. Hoomalu.....	16	Upper Paia

TRIAL JURORS (Continued)

No.	Name	Precinct	Residence
67.	John P. Perreira.....	16	Upper Paia
68.	Benjamin M. Ambrose.....	16	Upper Paia
69.	Sevath E. Boyum	16	Upper Paia
70.	John Bak, Jr.....	17	Keahua
71.	Charles Y. Arakaki.....	17	Keahua
72.	Charles F. A. Du Bois.....	18	Makawao
73.	E. J. Allencastre.....	18	Makawao
74.	William H. Amaral.....	18	Makawao
75.	Masao Higa	18	Makawao
76.	Charles S. L. Awai.....	19	Haiku
77.	Emil Davis	19	Haiku
78.	Eugene Rodrigues	19	Haiku
79.	Fred Wilhelm	20	Huelo
80.	Eugene F. Ching.....	21	Keanae
81.	John K. Awai, Jr.....	22	Nahiku
82.	Clifford E. Clark.....	23	Hana
83.	Yoshio Okada	23	Hana
84.	Yoshimi Uchiyama	24	Kipahula
85.	Henry Gibson	25	Kaupo
86.	Edmund Brown	26	Honuaula
87.	Fred A. Russell, Jr.....	27	Keokea
88.	Robert G. von Tempsky.....	27	Keokea
89.	Ernest J. Morton.....	27	Keokea
90.	Clarence K. Y. Wong.....	27	Keokea
91.	Takeshi Tanabe	28	Kihe
92.	L. Kiha Kaalouahi	29	Halawa
93.	Gilbert W. Anderson	30	Pukoo
94.	Wallace C. Aping.....	30	Pukoo
95.	Melvin McGuire	31	Kaunakakai
96.	Wilfred H. Paul.....	31	Kaunakakai
97.	Manuel A. Gonsalves.....	31	Kaunakakai
98.	Ernest P. Elia	32	Hoolehua
99.	Edward En Fo Leong.....	32	Hoolehua
100.	Peter M. Fitzgerald	33	Maunaloa

Territory of Hawaii,

County of Maui,

District of Wailuku—ss.

We Hereby Certify that the foregoing are true and correct lists of the names of persons selected by us from the citizens, voters and residents of the several precincts of the Second Circuit of the Ter-

ritory of Hawaii in and for the year A.D. 1947; and that the same are persons believed to be qualified to act and serve as such Jurors, and that such selections were made pursuant to law; Your Honor, as Judge of the Circuit Court of this Circuit, constituting one of our Commissioners and joining with us in the selection and listing of the foregoing persons as Jurors.

[Seal] /s/ CLAUDE E. CHATTERTON,
Jury Commissioner.

 /s/ AUGUSTINE POMBO,
Jury Commissioner.

Subscribed and sworn to before me this 16th day of December, A.D. 1946.

 /s/ JOHN V. COCKETT,
Clerk, Circuit Court, Second Circuit, Territory of Hawaii.

Territory of Hawaii,
County of Maui,
District of Wailuku—ss.

I, Cable A. Wirtz, Do Hereby Certify that, as Judge of the Circuit Court of the Second Circuit, Territory of Hawaii, and pursuant to law, together with Claude E. Chatterton and Augustine Pombo, Jury Commissioners, I participated in choosing and listing the foregoing named persons as Grand and Trial Jurors for the Year (Term) 1947.

I Further Certify that the foregoing are true and

correct lists of the names of persons selected by us from the citizens, voters and residents of the several precincts of the Second Circuit of the Territory of Hawaii in and for the year 1947; and that the same are persons believed to be qualified to act as such Jurors; and that such selection and listing was made pursuant to law.

/s/ CABLE A. WIRTZ.

Subscribed and sworn to before me this 17th day of December, A.D., 1946.

/s/ JOHN V. COCKETT,
Clerk, Circuit Court, Second Circuit, Territory of
Hawaii.

Filed Dec. 17, 1946.

/s/ JOHN V. COCKETT,
Clerk, Second Circuit Court.

CLERK'S MINUTES

Jurors, Grand—Drawing of December 27th, 1946

In the Matter of

The Drawing of Grand Jurors to Serve During the
A.D. 1947 Term.

At Term: Friday, December 27th, 1946, at
10:00 a.m.

Present: Hon. Cable A. Wirtz, Judge Presiding.

D. W. Tallant, Deputy Clerk.

Ivy W. Parks, Court Reporter.

Lyons K. Naone, Jr., Bailiff.

ritory of Hawaii in and for the year A.D. 1947; and that the same are persons believed to be qualified to act and serve as such Jurors, and that such selections were made pursuant to law; Your Honor, as Judge of the Circuit Court of this Circuit, constituting one of our Commissioners and joining with us in the selection and listing of the foregoing persons as Jurors.

[Seal] /s/ CLAUDE E. CHATTERTON,
 Jury Commissioner.

 /s/ AUGUSTINE POMBO,
 Jury Commissioner.

Subscribed and sworn to before me this 16th day of December, A.D. 1946.

 /s/ JOHN V. COCKETT,
Clerk, Circuit Court, Second Circuit, Territory of
Hawaii.

Territory of Hawaii,
County of Maui,
District of Wailuku—ss.

I, Cable A. Wirtz, Do Hereby Certify that, as Judge of the Circuit Court of the Second Circuit, Territory of Hawaii, and pursuant to law, together with Claude E. Chatterton and Augustine Pombo, Jury Commissioners, I participated in choosing and listing the foregoing named persons as Grand and Trial Jurors for the Year (Term) 1947.

I Further Certify that the foregoing are true and

correct lists of the names of persons selected by us from the citizens, voters and residents of the several precincts of the Second Circuit of the Territory of Hawaii in and for the year 1947; and that the same are persons believed to be qualified to act as such Jurors; and that such selection and listing was made pursuant to law.

/s/ CABLE A. WIRTZ.

Subscribed and sworn to before me this 17th day of December, A.D., 1946.

/s/ JOHN V. COCKETT,
Clerk, Circuit Court, Second Circuit, Territory of
Hawaii.

Filed Dec. 17, 1946.

/s/ JOHN V. COCKETT,
Clerk, Second Circuit Court.

CLERK'S MINUTES

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D. W. Tallant, Deputy Clerk.

Ivy W. Parks, Court Reporter.

Lyons K. Naone, Jr., Bailiff.

Counsel: Wendell F. Crockett, Esq.,
Deputy County Attorney for the Territory.
Enos Vincent, Esquire.
Harold L. Duponte, Esquire.

Drawing of Grand Jurors

By Order of Court, the Clerk, after first shaking up the Grand Jury Box containing the names of Fifty (50) persons as Grand Jurors selected by the Jury Commissioners, draws therefrom the names of twenty-three (23) Grand Jurors, viz:

No.	List No.	Names
1.	11	Allan H. Ezell
2.	49	Kenneth Auld
3.	38	Anthony A. Tam
4.	43	Edward H. Baldwin
5.	45	Charles Goodness
6.	44	Henry S. S. Fong
7.	13	Winford W. Percy
8.	37	Richard H. Baldwin
9.	29	E. Stanley Elmore
10.	27	Jack Costa
11.	50	Paul H. Reinhart
12.	22	H. S. Peterson
13.	39	Walter W. Holt
14.	7	Ralph O. Cornwell
15.	41	John Plunkett
16.	10	Wai Ken Tom
17.	33	Robert P. Bruce
18.	3	Alfred S. Burns
19.	16	Joseph H. Trask
20.	6	Edward S. Bowmer
21.	25	Masao Mac Ajifu
22.	46	Charles E. Thompson
23.	15	Irving Maeda

No challenges having been made by Counsel, the Court announced that the names just drawn con-

stitute the Grand Jury Panel for the A.D. 1947 Term.

/s/ D. W. TALLANT,
Deputy Clerk.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the office of the Clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated, at Wailuku, Maui, T. H., Sept. 16th, A.D. 1947.

JOHN V. COCKETT,
Clerk, Circuit Court, Second Circuit, Territory of
Hawaii.

Admitted.

In the Circuit Court of the Second Circuit
Territory of Hawaii

In the matter of the persons drawn to serve and act as Trial Jurors in the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, during the A.D. 1947 Term, before the Honorable Cable A. Wirtz, Judge.

I, the undersigned, Judge of the Circuit Court of the Second Judicial Circuit, do hereby certify that on Friday, the 27th day of December, A.D. 1946, and in public, to wit: the Court Room of said Circuit Court, in the Court House, at Wailuku, Maui, Territory of Hawaii, D. W. Tallant, Deputy Clerk of said Circuit Court, at my direction and in my presence, after first shaking the Jury Box containing the names deposited therein (being the box

wherein the names of persons, heretofore selected by the Jury Commissioners of said Circuit Court to serve and act as Trial Jurors in the Circuit Court of the Second Judicial Circuit, of the Territory, for the year A.D. 1947, were duly deposited), so as to thoroughly mix the pieces of paper upon which such names were and are written, did draw therefrom, by lot, the names of Twenty-Six (26) persons to serve and act as Trial Jurors at the A.D. 1947, Term of said Court, to be and appear before the said Circuit Court of the Second Judicial Circuit of the said Territory, on day, the day of, A.D. 19.., at o'clock in the..... noon of said day:

That the names of the persons so drawn to serve and act as Trial Jurors, as aforesaid, are as follows:

1. William S. K. Brandt
2. Charles Y. Arakaki
3. Walter Young
4. Donald J. Huxtable
5. Masao Higa
6. James T. Murakami
7. Benjamin J. Ambrose
8. James K. Nashiwa
9. Frank Dolim
10. Charles S. L. Awai
11. E. J. Allencastre
12. John Nunes
13. John Nedermeyer
14. Charles C. Young
15. Peter M. Fitzgerald

16. Fred A. Russell, Jr.
17. Kokuichi Omura
18. Tony Molina
19. Eugene F. Ching
20. Takeshi Tanabe
21. Henry Gibson
22. L. Kiha Kaalouahi
23. John G. Duarte
24. Gilbert W. Anderson
25. Paul F. Hirashima
26. Henry B. Caldwell

I do further certify that the foregoing is a true and correct list of the persons so drawn as aforesaid, by said Clerk, in my presence, to serve and act as Trial Jurors in the Circuit Court and during the Term aforesaid, and that said drawing was open and in public; notice of said drawing having been duly advertised in the Maui News, a newspaper printed and published in Wailuku, Maui, in its issues of December 18th and December 25th, 1946.

Witness, my hand and the Seal of the Circuit Court of the Second Judicial Circuit, at Wailuku, County of Maui, Territory of Hawaii, this 27th day of December, 1946.

/s/ CABLE A. WIRTZ,

Judge of the Circuit Court of the Second Judicial Circuit, Territory of Hawaii.

Attest:

[Seal] /s/ D. W. TALLANT,

Deputy Clerk of the Circuit
Court of the Second Circuit.

Here insert notice of publication of such time and place, if any made, and in what newspaper.—See amendment to Sec. 1779, Rev. L., p. 170, Lews 1905.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the office of the clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated, at Wailuku, Maui, T. H., Sept. 13th, A.D. 1947.

/s/ JOHN V. COCKETT,

Clerk, Circuit Court, Second Circuit, Territory of Hawaii.

In the Circuit Court of the Second Circuit
Territory of Hawaii

In the matter of the persons drawn to serve and act as Grand Jurors in the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, during the A.D. 1947 Term, before the Honorable Cable A. Wirtz, Judge.

I, the undersigned, Judge of the Circuit Court of the Second Judicial Circuit, do hereby certify that on Friday, the 27th day of December, A.D. 1946, and in public, to wit: the Court Room of said Circuit Court, in the Court House, at Wailuku, Maui, Territory of Hawaii, D. W. Tallant, Deputy Clerk of said Circuit Court, at my direction and in my presence, after first shaking the Jury Box containing the names deposited therein (being the box wherein the names of persons, heretofore selected by the Jury Commissioners of said Circuit Court

to serve and act as Grand Jurors in the Circuit Court of the Second Judicial Circuit, of the Territory, for the year A.D. 1947, were duly deposited), so as to thoroughly mix the pieces of paper upon which such names were and are written, did draw therefrom, by lot, the names of Twenty-Three (23) persons to serve and act as Grand Jurors at the A.D. 1947, Term of said Court, to be and appear before the said Circuit Court of the Second Judicial Circuit of the said Territory, on day, the day of, A.D. 19.., at o'clock in the noon of said day:

That the names of the persons so drawn to serve and act as Grand Jurors, as aforesaid, are as follows:

1. Allan H. Ezell
2. Kenneth Auld
3. Anthony A. Tam
4. Edward H. Baldwin
5. Charles Goodness
6. Henry S. S. Fong
7. Winford W. Percy
8. Richard H. Baldwin
9. E. Stanley Elmore
10. Jack Costa
11. Paul H. Reinhart
12. H. S. Peterson
13. Walter W. Holt
14. Ralph O. Cornwell
15. John Plunkett

16. Wai Ken Tom
17. Robert P. Bruce
18. Alfred S. Burns
19. Joseph H. Trask
20. Edward S. Bowmer
21. Masao Mac Ajifu
22. Charles E. Thompson
23. Irving Maeda

I do further certify that the foregoing is a true and correct list of the persons so drawn as aforesaid, by said Clerk, in my presence, to serve and act as Grand Jurors in the Circuit Court and during the Term aforesaid, and that said drawing was open and in public; notice of said drawing having been duly advertised in the Maui News, a newspaper printed and published in Wailuku, Maui, in its issues of December 18th, and December 25th, 1946.

Witness, my hand and the Seal of the Circuit Court of the Second Judicial Circuit, at Wailuku, County of Maui, Territory of Hawaii, this 27th day of December, 1946.

/s/ CABLE A. WIRTZ,

Judge of the Circuit Court of the Second Judicial Circuit, Territory of Hawaii.

Attest:

[Seal] /s/ D. W. TALLANT,

Deputy Clerk of the Circuit
Court of the Second Circuit.

Here insert notice of publication of such time and place, if any made, and in what newspaper.—See

amendment to Sec. 1779, Rev. L., p. 170, Lews 1905.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the office of the Clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated, at Wailuku, Maui, T. H., Sept. 13th, A.D. 1947.

/s/ JOHN V. COCKETT,

Clerk, Circuit Court, Second Circuit, Territory of Hawaii.

COURT'S EXHIBIT No. 2

In the Circuit Court of the Second Circuit
Territory of Hawaii

Criminal Nos. 2412-2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al, and DIEGO BARBOSA, et al.

Prosecution's Exhibit D

CHARGE TO THE GRAND JURY

You have been called here, Gentlemen, for a very important duty and service, you have been impanelled and sworn as Grand Jurors of the Circuit Court of the Second Circuit, Territory of Hawaii, for the balance of the January Term 1947 of this Court. You have come here from different parts of this Circuit, from different walks of life, and

Exhibit No. 2—(Continued)

have been certified as men qualified to perform the exacting duties which the Law demands of you as Grand Jurors. The duties with which you are charged are of the highest importance in the administration of justice, and are some of the most exacting entrusted to citizens of the United States of America.

You, as citizens of the Territory of Hawaii, owe to it this service which you have been called upon to render; this is a duty which you should not shirk and is one which you should willingly perform. Without this sacrifice and service of its citizens, the Laws of the Territory of Hawaii could not be enforced, and without our law enforcement our lives and property would not be secure.

Your duty in general is to consider matters which are submitted to you, and to see that proper accusations are made against those who violate our laws, and to guard the innocent against false accusation.

It is provided by Section 9810 of the Revised Laws of Hawaii, 1945, that the Judge of the Circuit Court of the Second Circuit, Territory of Hawaii, may order a Grand Jury to be summoned to sit at such times as the Court may direct. Pursuant to this authorization, I have ordered you—the Grand Jury—to be summoned into session for since the last meeting of the Grand Jury in this Circuit, many matters have arisen which require your consideration.

Let me say here, so that there may be no misun-

Exhibit No. 2—(Continued)

derstanding on this point in the future, that you constitute a Grand Jury when and only when you have been called into session by this Court. Unless duly convened by the direction of the Court you, both as individuals and as a group, are entirely powerless to function as an official body. Accordingly, you will hereafter meet only for sessions of which you have been officially notified, after a written order has been made by the Court or upon an order given to you in open Court.

As you will recall, by the Constitution of the United States no person can be held to answer for a capital or otherwise infamous crime except upon a presentment or indictment of a Grand Jury, save in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger. This constitutional provision, of course, applies to and is in full force and effect within the Territory of Hawaii.

No steps, therefore, can be taken to the exceptions above mentioned for the prosecution of any crime on an infamous character (and under this designation the whole series of felonies is classed) beyond the arrest, examination and commitment of the party accused, until the Grand Jury have deliberated and acted upon the accusation.

You thus see, Gentlemen, that your functions are not only important, as I have already stated, but indispensable to the administration of criminal justice.

The institution of the Grand Jury is centuries

Exhibit No. 2—(Continued)

old in the history of England from which country comes most of our common law, which is the unwritten law of the land. For a long period its powers were not clearly defined. At first it was a body which not only accused but also tried public offenders. It underwent many changes both in form and substance in the course of time. In the struggles which arose in England between the powers of the King and the rights of his subjects, it often stood as a barrier against prosecution in the King's name, until, at length, it came to be regarded as an institution by which the subject was rendered secure against oppression from unfounded prosecution of the crown.

At the time of the adoption of our Constitution it had become what it is today—an informing and accusing tribunal only, without whose action no person charged with a felony could, except in certain special cases, be put to trial.

The institution of the Grand Jury was adopted in the United States and has continued by Constitutional provision from consideration similar to those which gave to it its chief value in England. It is designed as a means not only of bringing to trial persons accused of crime upon just grounds, but also as a means of protecting the citizen against unfounded accusation, whether it comes from the Government or whether it be prompted by partisan passion or private enmity.

It is our Fundamental Law that no person, unless

Exhibit No. 2—(Continued)

he be in the military or naval services, shall be required to answer for any of the higher crimes unless this body, constituted of not less than 13 nor more than 23 good and lawful men, selected in the manner prescribed by law, shall declare upon careful deliberation under the solemnity of an oath, that there is good and sound reason for his or her accusation and trial.

Upon you, Gentlemen, there is cast a double duty; one, a duty to the Government, or, more properly speaking, to society, to see to it that parties against whom there is just ground to charge the commission of crime, shall be held to answer the charge; and, on the other hand, a duty to the citizen to see that he is not subjected to prosecution upon accusations having no better foundation than public clamor or private malice.

The Government is represented by its Prosecuting Officer, the County Attorney, or his Deputy. He prosecutes the parties charged with the commission, within this County, of criminal offenses against the penal Laws of the Territory of Hawaii. The Prosecuting Officer will appear before you and present the accusations which the Government may desire to have considered by you. He will assist you in the examination of witnesses. He will also advise you as to the laws charged to have been violated and will see to the issuance and service of process to secure the attendance of such witnesses, and the production of such evidence, as may be nec-

Exhibit No. 2—(Continued)

essary for the proper discharge of your duties. He shall also draw such indictments as you may direct. He shall not give you advice as to the sufficiency or insufficiency of the evidence in any matter, nor in any way seek to influence you to find or not to find any indictment or to take part in any of your deliberations, these matters being wholly within your exclusive province.

Any or all of you may, of course, directly question witnesses appearing before your body. You have the right to direct witnesses to answer all proper questions about the offense being investigated, but you may not require anyone to give evidence against himself or to answer any questions the answers to which would subject him to criminal prosecution. In the event you have a witness before you whom you suspect may have been guilty of some offense in connection with the matter under investigation, you should inform the witness of his right to refuse to answer, if his answer might tend to incriminate him. If any witness summoned before you refuses to answer any question propounded and you believe that he should be required to answer, you should report the matter to the Court, stating, in writing, the question asked and the reason, if any, given by the witness for refusing to answer. If the witness should be required to answer, the Court will assist you in compelling him to do so or in taking such action as may appear to be just and proper in the premises. This is a question of law to be decided by the Court alone.

Exhibit No. 2—(Continued)

In your investigations you will receive only legal evidence to the exclusion of mere reports, suspicions and heresay evidence. Subject to this qualification, you will receive all the evidence presented which may throw light upon the matter under consideration, whether it tends to establish the innocence or guilt of the accused.

And further if, in the course of your inquiries, you have reason to believe that there is other evidence not presented to you but which is within your reach and which would qualify or explain away the charge under investigation, it will be your duty to order such evidence to be produced.

With regard to the amount of evidence required to warrant your presenting or indicting a person, you are advised as follows: As Grand Jurors you will hear only one side of the case—the Government's side—and, at no time, will the accused person or persons appear before you and give his or their side of the case. After hearing all the Government has presented, you should keep one and only one thought in mind, and, that is, if you were sitting as a Trial Juror would you acquit or convict on the basis of the testimony which you have heard unexplained and uncontradicted? If you believe you would convict, you should return a "True Bill" or an indictment. If not, you should and it is your duty to return a "No Bill" or no indictment.

In order to justify your returning an indictment or the making of a presentment, you should be convinced that the evidence before you, unexplained

Exhibit No. 2—(Continued)

and uncontradicted, would warrant a conviction by a Trial Jury. You should bear in mind that you are not here to try cases, nor are you here to be convinced beyond a reasonable doubt of the guilt of the accused, but you are here simply to weigh the Government's evidence as given to you and to decide if there is sufficient evidence to warrant the case coming before a Trial Jury.

Do not let your private opinions upon a matter or outside interests prejudice your finding. Accept what you hear from the witnesses, and if you do not believe the Government has sufficient evidence, it is your duty to say so and to return a "No Bill." If, on the other hand, you believe from the unexplained and uncontradicted evidence which the Government has presented to you that the accused should be brought to trial and given an opportunity to explain his side of the case to a body of 12 Trial Jurors, it is your duty to return an indictment.

Your duties, Gentlemen, are substantially those pointed out in the Oath which has just been administered to you by the Clerk. May I indicate some of the very important parts of your Oath?

First: It is provided that you will diligently inquire and true presentment make of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge touching this present service.

Second: That you will present no one through envy, hatred or malice.

Third: That you shall leave no one unrepresented

Exhibit No. 2—(Continued)

through fear, favor, affection, gain, reward, or hope therefor, but will present all things truly as they come to your knowledge according to the best of your understanding; and

Fourth: That you shall keep secret the proceedings had before you.

There are two terms used in this Oath which you have taken as to which a few words of explanation may be helpful. I refer to the words "indictment" and "presentment." An "indictment" is a written accusation of a crime drawn up by the prosecuting officer and submitted to the Grand Jury and found by it and returned upon oath as a "True Bill." A "presentment" is an informal accusation of a crime made by a Grand Jury on the basis of its own knowledge or observation, or upon its own motion upon information from others, without any bill of indictment having been submitted to it by the prosecuting officer. It is, in essence, an instruction by the Grand Jury to the prosecuting officer for the framing of an indictment which, upon being prepared by him, is submitted to the Grand Jury and found to be a "True Bill."

One of the essential purposes of an indictment or presentment is fairly to inform the accused of the charge which has been preferred against him by the Grand Jury so as to enable him to prepare his defense.

As an informing and accusing body, Gentlemen, your powers of investigation are limited to criminal

Exhibit No. 2—(Continued)

matters and within this realm to the returning of indictments or presentments. You are limited in this regard, first, to matters to which your attention may have been called by the Court; second, to matters which have been submitted to you for your consideration by the prosecuting officer; third, to matters which come to your knowledge in the course of your investigations into other matters brought before you or from your own observations; and, fourth, to matters which come to your knowledge from the disclosure of your fellow members under oath.

As a Grand Jury you have rather broad powers exercisable upon your own volition to investigate crimes. You may act upon the testimony of one of your members under oath, or on the personal knowledge of any one of your members communicated to you under no other sanction than his oath as a Grand Juror. This knowledge of your member may be acquired from any source. Such knowledge must, however, be direct knowledge or knowledge gained from a reliable source.

You are not, however, at liberty to use this broad power of investigation for the purpose of conducting a speculative inquiry founded upon rumor or suspicion, or the mere chance that some crime may be discovered; nor are you to use this power to accomplish some ulterior purpose. The inquisitorial power you have is limited by your oath, which prohibits you from presenting any man through envy, hatred or malice, and by the Bill of Rights prohibit-

Exhibit No. 2—(Continued)

ing unreasonable searches and seizures. Before instituting an investigation of your own, you must first have probable cause to believe that a crime has been committed and reasonable grounds for believing that a particular person or persons committed that crime.

Your resort to your independent powers of investigation you will find will be the exception rather than the rule, for you will soon discover that by the ordinary processes of the law most, if not all, felonies are discovered and brought to your attention. In general, therefor, you will find it necessary to use this independent power of investigation only in regard to criminal action which the ordinary processes of law are unable to cope with or discover, and which affect or injure the public generally, and if permitted to continue would endanger the public safety or health, demoralize the personal security of the members of the public, or permit systematic depredation by public officers.

Under the Laws of our Territory there is no crime other than as prescribed by statute. There are, in general, two types or crimes, namely, felonies and misdemeanors. A felony is a crime for which the prescribed punishment is imprisonment for more than one year. A misdemeanor is a crime punishable by imprisonment for a period of a year or less than a year.

You are essentially concerned with cases involving felonies. You may, however, at the prosecuting

Exhibit No. 2—(Continued)

officer's request, or even upon your own initiative, consider certain misdemeanor cases of the type which are cognizable by a Grand Jury at common law. However, you will find by experience that as the regular processes of law adequately take care of misdemeanors and that as felony cases will consume your time, about the only misdemeanor cases which you will want to consider will be those as to which the prosecuting officer for some special reason desires your approval, before prosecution.

While serving as Grand Jurors you may meet with people who act in the capacity of private prosecutors. Territorial Law provides the people with a public prosecutor, the County Attorney. Generally, although not necessarily, all matters should be presented either to a District Magistrate or to the County Attorney to pass upon before they are presented to the Grand Jury. Persons who write letters to the Grand Jury or who appear before the Grand Jury with some complaint which they have not seen fit to present before a District Magistrate or to the County Attorney usually have motives of their own, and you, as Grand Jurors, should weigh very carefully statements of those private prosecutors before any indictments desired by them are returned, for such persons usually have some private grievance or grudge.

You are to keep secret all proceedings had before you. The counsel of the Government, of your fellow members and your own, you shall not disclose to anyone, not even to your wives. You are not at

Exhibit No. 2—(Continued)

liberty ever to state that you have had under consideration a matter which did not result in an indictment. Great injustice and injury might be done to the good name and standing of a citizen if it were ever known that there had been under consideration and for your deliberation the question of his innocence or guilt of a public offense. You will allow no one to question you as to your action or as to the action of your associates on the Grand Jury, nor shall you consult any one about any matter being or about to be investigated by you or about the law in relation thereto. The law trusts your judgment, not that of some other person whom you might consult. You may have ever so much confidence in the ability of some attorney or other person, but you are not permitted, by law, to consult any person other than the prosecuting officer and the Judge of this Court, nor is any other person permitted to advise you.

For a Grand Juror, or any person appearing before a Grand Jury, to divulge, except in a court of law, anything which he had learnt by reason of being a Grand Juror, or witness, interpreter, or reporter, until after an indicted person has been taken into custody is a criminal offense. The Government confides in you information which must be kept secret until it becomes proper for the Government to disclose it.

An interpreter may be present at the examination of witnesses before the Grand Jury upon the request of the foreman. The Court, upon request of

Exhibit No. 2—(Continued)

the foreman, will assign an official reporter to attend and report testimony given by the witnesses before the Grand Jury, and the reporter shall furnish the prosecuting officer with the transcript of such testimony when so directed by the foreman. The interpreter and reporter must each be sworn to act faithfully and to keep secret all proceedings of the Grand Jury. The interpreter and reporter will be sworn by the Court. Except for the prosecuting officer, reporter and interpreter, and the witness under examination, no other person shall be permitted to be present during the session of the Grand Jury. Absolutely no person except Members of the Grand Jury shall be permitted to be present during the deliberations and expressions of opinion and voting of the Grand Jury.

No indictment shall be found, nor shall any presentment be made, except by the concurrence of at least twelve of your members. It requires twelve of your number to indict and as many more as may vote. But, if less than twelve vote for an indictment, it is not a "True Bill" or "Indictment."

It shall be the duty of the Foreman of the Grand Jury to keep a record of the number of the Grand Jury concurring in the finding of any indictment and to file such record with the Clerk of the Court at the time the indictment is returned. Such record shall not be made public except upon order of the Court.

An "Indictment," when found, shall be endorsed "A True Bill" and such endorsement shall be

Exhibit No. 2—(Continued)

signed by your foreman whether he concurs in the finding of the indictment or not. It shall also be endorsed by the prosecuting officer. Indictments and presentments, when found, shall with all convenient dispatch be presented by your foreman, in the presence of the other Grand Jurors, to the Court for further proceedings according to law.

In case an indictment be found against any person not in custody or under bond, the same shall not be open to inspection to any person other than the prosecuting officer and the Court until the person therein named as a defendant shall have been arrested.

Witnesses appearing before the Grand Jury may be sworn in open Court or by the Foreman of the Grand Jury, or, in his absence, by any member thereof. No member of the Grand Jury may be excused for the term except by the Court. Your Foreman, however, may excuse one or more of your members temporarily, provided that the number remaining at all times is sufficient to constitute a quorum of thirteen. If any Grand Juror is absent without excuse, or is delinquent in his duty, it will be the duty of the foreman, in the presence of other Grand Jurors, to present the matter to the Court.

After being duly called into session by the Court, you will convene and adjourn from time to time as the work coming before you may require. It will be the duty of the foreman to preside in all your proceedings and deliberations, to preserve order and decorum, and to arrange, systematize and expedite

Exhibit No. 2—(Continued)

the work of the Grand Jury. You are to appoint one of your number to legibly record and preserve the minutes of your proceedings. These minutes are to be kept in permanent form and to be delivered to the prosecuting officer when so directed by the Grand Jury.

If, in the course of your proceedings, any case or matter shall come before you in which any member of the Grand Jury shall be personally interested or involved, or otherwise disqualified, he shall not participate in the consideration of such case or matter but shall withdraw therefrom.

For your guidance and convenience a copy of the Oath which you have taken as Grand Jurors and the form of Oath to be administered to witnesses appearing before you will be given you by the Clerk of the Court.

So far as the Court is now aware, no matter will be presented to you requiring any other special directions other than those already given. Should any matter arise, the Court will then call you before it and give such directions as may be required. You are at liberty at any time to ask the advice of the Court upon any question of law relating to matters under investigation, but you will often find the advice of the prosecuting officer upon these matters sufficient to guide your action.

The Court Room is available for your use during your deliberations. Mr. E. Stanley Elmore is appointed Foreman of this Grand Jury. The Court has appointed Sergeant Edward Chang to attend you in

Exhibit No. 2—(Continued)

the capacity of Bailiff. You will now convene, select your Clerk from among your members and proceed at once to inquire into offenses cognizable by you now ready for your immediate investigation.

Dated at Wailuku, Maui, Territory of Hawaii, this 25th day of March, 1947.

[Seal of Court.]

/s/ CABLE A. WIRTZ,
Judge, Circuit Court,
Second Circuit, T. H.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the office of the Clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated, at Wailuku, Maui, T. H., Sept. 18th, A.D. 1947.

/s/ GEORGE G. KAPAHEE,
Assistant Clerk, Circuit Court, Second Circuit,
Territory of Hawaii.

[Endorsed]: Filed Mar. 25, 1947.

/s/ LYONS K. NAONE, JR.,
Assistant Clerk, Second
Circuit Court.

SUMMARY OF QUESTIONNAIRE
CIRCUIT COURT, SECOND CIRCUIT,
TERRITORY OF HAWAII
Criminal Nos. 2412 and 2413
TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al and DIEGO BARBOSA, et al.

PROSECUTION'S EXHIBIT C

Precinct	Qualified	Questionable	Exempted	Not Qualified	Out of Juris- diction Moved	Temporary Out of Jurisdiction Army	Deceased	Questionnaire Not Received	Total
1st.....	93	88	60	0	48	9	2	20	320
2nd.....	32	22	33	0	3	0	0	6	96
10th.....	38	41	33	13	14	1	1	10	151
17th.....	30	21	7	27	11	6	1	11	114
18th.....	50	79	52	78	10	9	0	14	292
19th.....	57	57	30	49	8	3	1	13	218
20th.....	2	13	2	20	1	0	0	3	41
21st.....	5	10	10	28	2	0	1	3	59
22nd.....	1	2	2	3	0	0	0	0	8
23rd.....	15	20	21	51	7	0	3	22	139
24th.....	0	5	1	10	0	0	1	1	18
25th.....	1	2	1	8	0	0	0	12	24
26th.....	7	15	4	16	3	1	0	3	49
28th.....	9	10	7	4	1	1	0	15	47
29th.....	2	3	9	0	0	0	0	2	16
30th.....	9	16	24	39	5	0	0	11	104
31st.....	56	39	31	49	11	1	2	17	206
32nd.....	8	19	22	40	7	1	0	16	113
33rd.....	29	12	1	9	3	3	0	3	60
	444	474	350	444	134	35	12	182	2,075

Filed Sept. 18, 1947 at 11:25 A.M.

/s/ D. W. TALLANT,
Deputy Clerk of Said Court.

CIRCUIT COURT, SECOND CIRCUIT

Territory of Hawaii

Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al & DIEGO BARBOSA, et al.

PROSECUTION'S EXHIBIT A

LIST OF REGISTERED VOTERS FOR THE GENERAL ELECTION
NOVEMBER 7TH, 1944, THIRD REPRESENTATIVE DISTRICT
BY NATIONALITIES

Male											
Precincts.		American.....	Chinese.....	English.....	Filipino.....	Hawaiian.....	Part-Hawaiian..	Japanese.....	Korean.....	Porto Rican.....	Portuguese.....
1st.	Lanai City.....	14	18	0	15	37	27	202	6	4	11
2nd.	Honolua.....	3	2	0	1	21	10	45	0	0	4
3rd.	Mala - Lahaina.....	12	4	2	6	45	21	243	0	4	33
4th.	Kam III - Lahaina.....	24	9	2	1	43	7	137	0	0	21
5th.	Olowalu.....	1	0	0	0	8	0	4	0	0	1
6th.	Terr. Bldg. Grounds, Wailuku.....	25	6	2	0	46	27	95	0	3	40
7th.	Wailuku Intermediate.....	41	41	5	1	29	36	120	0	0	66
Totals.....		342	89	378	254	14	258	367	14	28	367
All Others.....		8	3	8	10	0	14	258	14	28	367

8th.	Piihana-Wailuku.....	4	16	0	1	51	32	157	1	15	63	8	348
9th.	Papohaku - Wailuku.....	3	6	0	2	37	19	86	0	5	36	6	200
10th.	Waihee.....	1	3	0	0	54	16	39	0	3	22	1	139
11th.	Kahakuloa.....	0	0	0	0	10	1	0	0	0	0	0	11
12th.	Kahului.....	25	12	1	0	42	22	170	0	0	32	11	315
13th.	Puunene.....	35	5	1	9	23	19	296	1	14	137	21	561
14th.	Spreckelsville.....	17	0	3	1	5	5	118	0	4	46	8	207
15th.	Lower Paia.....	19	13	0	3	20	10	94	2	7	73	4	245
16th.	Upper Paia.....	29	6	3	5	30	11	185	1	21	135	27	453
17th.	Keahua.....	4	0	0	0	6	2	94	1	1	35	4	147
18th.	Makawao.....	19	9	0	0	28	14	77	0	15	119	10	291
19th.	Haiku.....	8	10	0	4	23	18	69	0	1	39	6	178
20th.	Huelo.....	1	0	0	1	22	5	3	0	1	5	1	39
21st.	Keanae.....	2	2	0	1	36	6	1	0	0	2	0	50
22nd.	Nahiku.....	0	0	0	0	4	1	0	0	0	4	0	9
23rd.	Hana.....	6	6	0	2	66	10	39	0	1	14	3	147
24th.	Kipahulu.....	0	2	0	0	14	2	0	0	0	0	0	18
25th.	Kaupo.....	0	2	0	0	16	0	1	0	0	1	1	21
26th.	Honuaula.....	3	0	0	0	22	5	18	0	0	1	0	49
27th.	Keokea.....	14	35	0	3	35	17	96	0	2	53	12	267
28th.	Kihei.....	1	2	0	8	17	5	11	0	0	5	1	42
29th.	Halawa.....	0	0	0	0	12	1	0	0	0	0	0	13
30th.	Pukoo.....	10	2	0	1	56	18	6	0	0	2	1	96
31st.	Kaunakakai.....	12	10	0	3	56	29	70	1	0	8	6	195
32nd.	Hoolehua.....	7	6	0	0	82	8	4	0	0	2	1	110
33rd.	Maunaloa.....	3	4	0	2	3	3	21	0	0	3	2	41
34th.	Kalaupapa.....	11	5	1	1	78	17	19	0	0	16	2	150
Totals.....		354	236	20	63	1077	424	2520	13	101	1029	207	6044

Filed Sept. 18, 1947 at 10:45 A.M.

/s/ D. W. TALLANT,
Deputy Clerk of Said Court.

8th.	Pihana-Wailuku.....	3	15	0	1	44	27	133	0	10	58	7	298
9th.	Papohaku - Wailuku.....	3	5	0	1	33	14	75	0	4	33	5	173
10th.	Waihee.....	1	3	0	0	52	15	36	0	3	19	1	130
11th.	Kahakuloa.....	0	0	0	0	10	1	0	0	0	0	0	11
12th.	Kahului.....	22	10	0	0	41	19	157	0	0	28	10	287
13th.	Puunene.....	32	5	1	8	23	18	267	1	12	132	20	519
14th.	Spreckelsville.....	17	0	3	1	4	5	102	0	4	44	5	185
15th.	Lower Paia.....	17	11	0	2	17	9	81	2	7	71	4	221
16th.	Upper Paia.....	26	6	2	5	28	10	159	1	17	127	24	405
17th.	Keahua.....	2	0	0	0	6	2	76	1	1	33	4	125
18th.	Makawao.....	18	8	0	0	27	14	66	0	15	104	9	261
19th.	Haiku.....	7	8	0	2	19	13	55	0	1	37	6	148
20th.	Huelo.....	1	0	0	1	18	4	2	0	1	5	1	33
21st.	Keanae.....	1	1	0	1	35	6	1	0	0	2	0	47
22nd.	Nahiku.....	0	0	0	0	4	1	0	0	0	3	0	8
23rd.	Hana.....	5	4	0	2	63	0	33	0	1	12	3	123
24th.	Kipahulu.....	0	2	0	0	12	1	0	0	0	0	0	15
25th.	Kaupo.....	0	2	0	0	15	0	1	0	0	1	1	20
26th.	Honuaula.....	3	0	0	0	18	5	17	0	0	1	0	44
27th.	Keokea.....	10	30	0	2	24	16	81	0	1	48	10	222
28th.	Kihel.....	1	2	0	0	16	5	8	0	0	5	1	38
29th.	Halawa.....	0	0	0	0	11	1	0	0	0	0	0	12
30th.	Pukoo.....	7	1	0	1	46	14	5	0	0	2	1	77
31st.	Kaunakakai.....	11	10	0	2	46	26	56	1	0	6	5	163
32nd.	Hoelehua.....	7	3	0	0	70	7	3	0	0	2	1	93
33rd.	Maunaloa.....	3	3	0	2	3	2	18	0	0	2	2	35
34th.	Kalaupapa.....	10	5	0	0	63	12	15	0	0	16	2	123
Totals.....		305	202	16	52	959	356	2195	9	87	942	179	5302

Filed Sept. 18, 1947 at 10:47 A.M.

/s/ D. W. TALLANT,

Deputy Clerk of Said Court.

[The following questionnaire form in use in the United States District Court is not a part of any exhibit; it is included by counsel in order to acquaint the Court of Appeals with the practice in the trial court.]

QUESTIONNAIRE

To Prospective Jurors

United States District Court
District of Hawaii

NOTE—Mail reply within 48 hours to Clerk,
U. S. District Court, P.O. Box 3193, Honolulu,
T. H.

1. Full name
2. Address, Residence Phone No.....
Business Phone No.....
3. Where born? Date of birth.....
4. If naturalized, when and where?.....
5. How long in Territory?.....
6. Have you been indicted or convicted of any
offense, if so, give details?.....
.....
7. Married or single?.....
8. Nationality of father?.....
of mother?
9. What experience have you had as a Juror?
(Indicate whether Criminal or Civil cases).....
10. What is your present occupation and by
whom employed?
.....

11. What has been your occupation during the past five years?

.....

12. What schools have you attended?.....

13. What grade in school did you reach?.....

.....

14. Have you any defect of hearing, or sight, or other physical reason which would interfere with your serving as a juror, if so, what?.....

.....

15. Do you claim disqualification or exemption from jury service for any reason? (Give details)

.....

.....

Date:..... Signature.....

(See reverse side for qualifications and exemptions)

Qualifications, Exemptions

Sec. 9791 R.L.H. 1945.

Qualified when. A person is qualified to act as a juror or grand juror:

1. If he is a male citizen of the United States, and of the Territory, of the age of twenty-one (21) years or over, and possesses the qualifications for registration as a voter, and is a resident of the circuit from which he is selected; and

2. If he is in possession of his natural faculties and not decrepit; and

3. If he is intelligent, and of good character; and

4. If he can understandingly speak, read and write the English language; and

5. If he is selected, summoned, returned and sworn without reference to race, or place of nativity.

Sec. 9792 R.L.H. 1945.

Disqualified when. A person is not competent to act as a juror who does not possess the qualifications prescribed by the preceding section, or who has been convicted of any felony or of a misdemeanor involving moral turpitude.

Sec. 9793 R.L.H. 1945.

Exempt when. A person is exempt from liability to act as a juror if he is:

1. Over sixty years of age;

2. An attorney at law;

3. A salaried officer or employee of the United States, Territory, city and county or county;

4. A minister of the gospel, or a priest of any denomination, following his profession;

5. A teacher in a university, college, academy, school, or other place or institution of learning;

6. A practicing physician, surgeon or dentist;

7. An officer, keeper or attendant of an almshouse, hospital or asylum.

8. A person employed on board of a vessel navigating the waters of or between the islands of the Territory, or on board of a vessel engaged in

the coasting trade, or plying between any port of the United States and a port in a foreign country.

9. A member of the militia when on active service, or an active member of a fire department of a village, town, city or other place in the Territory.

(Note: Under Section 3712, a person is not disqualified but may claim exemption.)

Filed Dec. 17th, 1946, at 11:00 o'clock a.m.

/s/ JOHN V. COCKETT,

Clerk, Second Circuit Court.

Miss Lewis: Now, the Court had some interest in the early stages of the proceedings—I have had time to get the material together and I wonder if it wouldn't be appropriate if we gave it an exhibit number. I have a biography of William Little Lee, who wrote that penal code. [6]

Judge Biggs: Yes, I would like to receive that. Any objection?

Mrs. Bouslog: No objection.

Judge Biggs: That will be marked and given a Defendants' number.

Miss Lewis: That was prepared by the Public Archives here. I have three copies.

Judge Biggs: Very well.

Miss Lewis: I also feel that it would be helpful to the Court, although the Court can take judicial notice of it. I have a photostat here of the Hawaiian Commission message, transmitting the proposed Hawaiian Organic Act. This is not the complete message. It is a large volume. But it includes all the parts relating to the report of the

judiciary, and it also includes the table of the penal laws that were transmitted with that message and the conspiracy and riot act as transmitted with that message.

Judge Biggs: I think we should receive it and let it be marked as a Defendants' exhibit.

Miss Lewis: And I also have for the Court's convenience a photostat of the parts of the House of Representatives report No. 305, 56th Congress, 1st session, which related to a report of the judiciary.

Judge Biggs: I think that should be received also. Let it be marked. [7]

The Clerk: "P," "Q" and "R."

(The documents referred to were received in evidence as "Defendants' Exhibits P, Q and R.")

DEFENDANTS' EXHIBIT P

William Little Lee

First Chief Justice of the Hawaiian Supreme Court

(All documents and publications quoted are on file in the Public Archives at Honolulu.)

William Little Lee was born at Sandy Hill, Washington County, New York, on February 25, 1821. He was the son of Stephen and Mary (Little) Lee. At the early age of thirteen he entered Norwich University in Vermont, where he remained two years, at the end of which time he left that institution and worked as a surveyor for the State of New York. Lee rose rapidly in this profession and at

the coasting trade, or plying between any port of the United States and a port in a foreign country.

9. A member of the militia when on active service, or an active member of a fire department of a village, town, city or other place in the Territory.

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the end of three years left the post of Resident Engineer to return to Norwich University, from which he graduated at the age of twenty, taking first honors.

On leaving the University Lee received the appointment of Superintendent of the Military Academy at Portsmouth, Virginia, in which position he remained one year. Having by this time decided upon adopting the law as his permanent profession, he entered Harvard Law School, where he completed his course of study under such well known jurists as Judge Story and Professor Greenleaf. After a serious illness, Lee commenced the practice of law in Troy, New York, in 1844.¹ Here he remained only a short time before the recurrence of pulmonary symptoms warned him to seek a milder climate. At that time public attention was turned towards the opportunities offered by the new Territory of Oregon. William Lee, together with Charles R. Bishop and other young men, embarked on the brig *Henry*², bound for the Columbia River by way of Hawaiian Islands. After a stormy voyage of 231 days from Newportbury, the *Henry* reached Honolulu on October 12, 1846. It was found that repairs to the brig would take several months to complete so the Oregon bound passengers became interested in the opportunities offered in Hawaii.

The government was in need of law advisers—the

¹Historical File, 1845, May 16. Certificate to practice Law in New York Supreme Court.

Attorney General, John Ricord—highly recommended William Lee. Under the Act to organize the Executive Department³ provision was made for the temporary appointment, by the Governor of Oahu, of one or more judges to sit at Honolulu and have original jurisdiction, for Oahu only, in cases involving over one hundred dollars in value, and general appellate jurisdiction for the whole kingdom. Lorrin Andrews was appointed first of these judges, legal assistance was urgently needed, and the King [Kamehameha III], impressed with Lee's abilities, persuaded him to abandon the Oregon project and remain in Honolulu. Lee was commissioned as judge, colleague of Judge Andrews, on December 1, 1846, at a salary of \$2500. a year.⁴ On the same day a letter of denization was issued him by the King in Council, conferring upon him all the rights, and privileges of an Hawaiian subject, without requiring him to surrender his American citizenship.⁵ The Hawaiian Reports begin with the decisions of Judge Lee in January 1847.

August 18, 1847, the King and Privy Council appointed Lee to the Board of Commissioners to quiet Land Titles to succeed William Richards.⁶

On August 26, 1847, the King received a Testi-

³Laws of Kamehameha III, II, 3.

⁴Privy Council Records, vol. 2, p. 91, 1846, Dec. 2.

⁵Foreign Office & Executive, 1846, Dec. 1. Original Letters Patent of Denization.

⁶Foreign Office & Executive, 1847, Aug. 18, original appointment.

monial signed by lawyers of Troy, New York, elaborating on Lee's character and abilities.⁷ A copy of this interesting document is attached.

The Act to Organize the Judiciary was approved September 7, 1847. Above district courts, having jurisdiction in minor cases only, were four circuit courts, taking the place of the governors' courts, and above these was established a Superior Court of Law and Equity, consisting of a Chief Justice and two Justices, all elected by the Representatives and holding office during good behavior. This had appellate jurisdiction in all cases and original jurisdiction in the more important cases. The Justices also went on circuit, sitting with the circuit judges.

September 27, 1847, the House of Representatives adopted a Joint Resolution requesting William L. Lee to go through the laws and make certain changes so as to make them clear.⁸ On September 29, 1847, the same House adopted the Resolution appointing William L. Lee, Chief Justice, and John Ii and Lorrin Andrews, Superior Judges.⁹

Prior to this appointment Lee had been commissioned as an Honorary Member of His Majesty's Privy Council of State.¹⁰

⁷Historical File, 1847, Aug. 26.

⁸Journal, House of Representatives, 1847, Sept. 27, p. 15.

⁹Ibid, Sept. 29, p. 16.

¹⁰Foreign Office & Executive, 1847, Sept. 10, original.

Judge Lee's work as a member and president of the Commission to quiet Land Titles has been too often recounted and is too lengthy to include in this biographical sketch. He twice submitted his resignation to the Privy Council, but both times was asked to withdraw it.

On March 11, 1849, William Lee was married to Miss Catherine E. Newton, of Albany, New York, on board of the American ship *Leland*, in Honolulu Harbor.¹¹ They had been friends long before Lee came to Hawaii.

On the 21 of June, 1850, the House of Nobles and Representatives passed the Penal Code, as presented by Lee, May 20, 1850. In his report prefacing the Penal Code, Lee states:

. . . I am greatly indebted to the labors of the commissioners appointed to prepare a penal code for Massachusetts, as given in their report, and also to those of Mr. Livingston in the penal code of Louisiana. From both of these able works I have borrowed largely . . . I have in the main, adopted the principles of the English common law, as the foundation of a code best adapted to the present and approaching wants and condition of the nation.
...''¹²

In 1851 Lee sat in the House of Representatives and was elected Speaker of that body, April 30, 1851, to serve for that year's session. At this session a resolution was passed by both houses appoint-

¹¹Polynesian, 1849, March 17.

¹²Penal Code, 1850, report as preface.

ing a commission to revise the constitution of the kingdom.¹³ The King, the Nobles and Representatives were each to appoint one member. The Nobles appointed John Ii, the House appointed William Lee, and the King's appointee was Dr. G. P. Judd, Minister of Finance.

The constitution, drafted by them was adopted by the legislature on June 14, 1852. At the head of the judicial system stood the Supreme Court, consisting of a Chief Justice, who was also Chancellor, and two associate Justices, all appointed by the King and Council and holding office during good behavior.¹⁴ Lee is understood to have had the principal part in the preparation of this instrument, and was no doubt the actual draftsman. All the Justices of the Superior Court of Law and Equity were appointed to the Supreme Court, Lee becoming Chief Justice and Chancellor, holding these positions until his death. Lee's resignation, offered in 1854, on account of ill health, was refused. His physical breakdown dated from the small pox epidemic of 1853, when he worked to exhaustion caring for the sick.

On March 12, 1855, Lee was appointed as His Majesty's Envoy Extraordinary and Minister Plenipotentiary to the courts of Washington, London, Paris and St. Petersburg, in which capacity he negotiated the first reciprocity Treaty¹⁵ which, how-

¹³Session Laws. 1851, p. 103.

¹⁴Constitution, 1852.

¹⁵Privy Council Records, vol. 9, p. 101, 1855, March 12.

ever, failed of ratification in the United States Senate. The *Polynesian*, 1855, September 8, gives an account of Lee's presentation to the President of the United States. The Foreign Office and Executive files, 1855, contain the official correspondence relative to Lee's mission.

On his return to Hawaii, Lee's health failed rapidly and, on May 28, 1857, William Little Lee, Chief Justice of Hawaii, passed away at his home in Honolulu.

Besides his official activities, William Lee was a founder and for many years president of the Royal Hawaiian Agricultural Society; was active in the establishment of the Honolulu Sailors' Home; at different times he was president of the Oahu Temperance Society and of the Hawaiian Bible Society, and a trustee of the Punahou Schools.

The *Polynesian*, May 30, 1857, gives a long account of the life and funeral of William L. Lee; the June 18, 1857 issue published the tributes paid him by the Supreme Court; and again on July 18, 1857, the Resolution drawn up by the Bar of Hawaii.

The original license issued to William L. Lee to practice law in the Supreme Court of New York State is in the Public Archives.¹⁶

The information on William Little Lee has been compiled from official and private records, and pub-

¹⁶Historical File, 1845, May 16.

lications on file in the Public Archives, at Honolulu, Territory of Hawaii.

/s/ MAUDE JONES,
Archivist, Board of Commissioners of Public
Archives.

Honolulu, April 30, 1948.

To All whom it may concern:

The undersigned cheerfully represent, that they have been for many years well acquainted with William L. Lee, Esquire, formerly a resident of the village of Sandy Hill, County of Washington & State of New York. In our opinion no young man could have better facilities for the acquisition of the best education, than he had—and that he improved those facilities none need doubt, as his aim seems ever to have been, to acquire those—excellencies of character which dignify & adorn the most elevated position in society—His unwearied industry as a student of the Law—prompted by a constant desire to become a master of this—his favorite science, was noticed by all who knew him——

Having finished his Law Studies at the celebrated Law School at Cambridge, under Chief Justice Story—he was admitted to the Bar of the Supreme Court of this State & soon after opened an office in the city of Troy where he practiced the Law until his departure for Oregon.

His prospects of future eminence & prosperity here, (at the time he left for Oregon city) were such as would have satisfied most young men. For

unyielding integrity, energy of character, untiring industry, & propriety of deportment in every respect in the various relations he sustained—business & social,—whether as the Lawyer, the student, or the private citizen,—few young men, if any, of our acquaintance, stood higher. He was emphatically one of the worthiest young men at the Bar, and an ornament to society.

Therefore it is with pleasure we avail ourselves of this privilege of certifying as to the character of Counsellor Lee & of recommending him to the favorable consideration of all whom fortune or business may bring to his acquaintance as one in every particular worthy of esteem & confidence; & as having the exquisite qualifications to discharge, with honor to himself & satisfaction to all concerned, the duties of any office of government to which, he may be appointed, & above all, as one of the “noblest works of God, an honest man.”

Dated Sandy Hill May A.D. 1847.

/s/ N. B. MILLIMAN,

/s/ CHARLES HUGHES,

/s/ I. McCAN,

/s/ HENRY B. NORTHUP,

/s/ LYMAN H. NORTHUP,

/s/ A. DALLAS WAIT,

/s/ HENRY C. MARTINDALE,

/s/ LUTHER WAIT,

Counsellors at Law, &c,

/s/ JOHN T. LAMPORTL,

/s/ E. PEARSON,

/s/ GEO. C. WAITE,

/s/ C. D. SHELDON,

Counsellor at Law. Troy,

N. York,

/s/ H. EVERTS,

Assist Alderman NY

Ward of City of Troy

N.Y. & Counsellor at

Law.

Having been for sometime, & until his departure from the United States, associated in business in the practice of Law with Col Lee it affords me unfeigned pleasure to be able to add to the above, my own testimony to his Excellence as an Associate, a Citizen, a Jurist & a Man.—

/s/ J. E. CHURCH,

late Church & Lee.

Counsellors at Law.

N York Sup Court 91½ River St. Troy N.Y.
Aug. 26th 1847.

Public Archives Foreign Office & Executive File,
August 26, 1847.

Admitted.

DEFENDANTS' EXHIBIT Q

Senate

55th Congress, 3d Session. Document No. 16.

Hawaiian Commission

MESSAGE

From the

President of the United States

Transmitting

The Report of the Hawaiian Commission, Appointed in Pursuance of the "Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States," Approved July 7, 1898; Together with a Copy of the Civil and Penal Laws of Hawaii.

December 6, 1898.—Read, referred to the Committee on Foreign Relations, and ordered to be printed.

Washington:

Government Printing Office,

1898.

To the Congress of the United States:

I transmit herewith, for the information of the

Exhibit Q—(Continued)

Congress, the report of the Hawaiian Commission, appointed in pursuance of the "Joint resolution to provide for annexing the Hawaiian Islands to the United States," approved July 7, 1898; together with a copy of the civil and penal laws of Hawaii.

WILLIAM McKINLEY.

Executive Mansion,
December 6, 1898.

United States Senate,
Washington, D. C., December 2, 1898.

To the President:

I have the honor to inclose herewith, for transmission to the Congress of the United States, the official report of the Hawaiian Commission, appointed in pursuance of the joint resolution of Congress approved July 7, 1898, being public resolution No. 51 of the Fifty-fifth Congress, together with an appendix containing copies of certain bills the passage of which is respectfully recommended, and a copy of the civil and penal laws of Hawaii, as modified in conformity with the recommendations of the commission, and reports from various executive officers of the Hawaiian Government and of committees appointed by the commission.

Respectfully submitted,

S. M. CULLOM,
Chairman.

III

Preface

The first written laws of Hawaii were published

Exhibit Q—(Continued)

in 1823, and the first compilation was published in 1842 in a small volume now known as the "Blue Book." This was followed by the Session Laws of 1843, and by the comprehensive acts to organize the Government, enacted in 1845-1847 and published together. A penal code was enacted 1850. Session Laws were then published yearly until 1859, when the laws, not already embodied in the Penal Code were codified into a "Civil Code," divided into chapters with sections numbered consecutively through the volume. This code was enacted by the legislature.

Following this were the Session Laws, passed every even year from 1860 to 1882, inclusive. In 1869 a new "Penal Code" was published, comprising the portions of the Penal Code of 1850 still in force and the penal statutes enacted subsequently. This code was enacted by the legislature. In 1884 the "Compiled Laws" were published. This comprised the portions of the Civil Code of 1859 still in force and the statutes enacted subsequently and not already included in the Penal Code of 1869. The original numbering of the Civil Code was retained and new matter was placed either near similar subjects or at the end of the volume.

After this the following laws were passed: Session Laws of 1884, 1886, 1887, 1888, 1890, 1892; Acts of the Provisional Government (1893), Constitution and Laws of the Republic (1894-1895), Session Laws of 1895-1896. In 1897 all the laws were compiled by Sidney M. Ballou and published

Exhibit Q—(Continued)

by authority in two volumes known as the “Civil Laws” and the “Penal Laws.”

The compiled laws of 1884 were taken as the basis of the civil laws, but the parts were rearranged and the sections renumbered, and all laws of a penal nature were transferred to the “penal laws.” The basis of the penal laws was the Penal Code of 1869, the chapters of which, so far as still in force, were retained with this original numbering, and new matter was added as new chapters. In this compilation many changes were made in pursuance of general statutes or the provisions of the constitution of the Republic, e. g., the substitution of “Republic” for “Kingdom,” “President” for “King,” etc. Notes were added at the end of each chapter, with references to the original statutes and to decisions of the supreme court. Following this compilation were the session laws of 1898.

The present volume comprises the Civil Laws and the Penal Laws compiled and published in 1897 and the Session Laws of 1898, modified in conformity with the recommendations of the commission of five members appointed by the President of the United States to recommend legislation concerning the Hawaiian Islands, under the provisions of the joint resolution of Congress approved July 7, 1898. The original numbering of chapters and sections has been retained. The numbers of those chapters and sections the text of which is omitted are inclosed in brackets. These include the chapters and sections which the commission recommended to

Exhibit Q—(Continued)

be repealed; also those of a temporary nature and no longer in force, and those, especially in the Session Laws of 1898, which were merely amendatory of previous laws, and which have been inserted in place of the laws to which they were amendatory. Many changes have been made in the text, in pursuance of the general recommendations of the commission, e. g., “Republic” has been changed to “Territory” or “Government,” “president” to “governor,” “minister of finance” to “treasurer,” “minister of the interior” to “superintendent of public works,” or otherwise, as the case might be, etc. The notes also have been changed to conform to changes in the text. Errors, so far as discovered, in the compilation of 1897 have been corrected. Enacting and approval clauses have been omitted.

The following abbreviations are used:

C.C., for civil code of 1859.

S.L., for session laws.

C.L., for compiled laws of 1884.

P.C., for penal code of 1869.

P.G., for acts of the provisional government, 1893.

L.R., for laws of the Republic.

P.L., for penal laws, 1897.

Chapter 28

CONSPIRACY

§ 229. A conspiracy is a malicious or fraudulent combination or mutual undertaking or concerting together of two or more to commit any offense or instigate anyone thereto, or charge anyone there-

Exhibit Q—(Continued)

with; or to do what plainly and directly tends to excite or occasion offense, or what is obviously and directly wrongfully injurious to another:

For instance——

A confederacy to commit murder, robbery, theft, burglary, or any other offense provided for in the criminal code; to prevent, obstruct, defeat, or pervert the course of justice by suborning a witness, tampering with jurors, or the like offenses;

To groundlessly accuse anyone of, and cause him to be prosecuted for, an offense;

To charge anyone with an offense, with the intent and for the purpose of extorting money from him;

To falsely charge one with being the father of an illegitimate child;

To cheat another by means of false tokens and pretenses;

To manufacture a spurious article for the purpose of defrauding whomsoever the same can be sold to;

To destroy a will and thereby prejudice the devisees;

To prevent another, by indirect and sinister means, from exercising his trade, and to impoverish him;

To establish, manage, or conduct a trust or monopoly in the purchase or sale of any commodity.

§ 230. Any person knowingly acceding to and joining in a conspiracy after the same is formed is a party thereto, no less than the one who originally takes part in forming the same.

Exhibit Q—(Continued)

§ 231. It is not requisite that the act agreed upon should be done or attempted in pursuance of the conspiracy; the conspiracy itself constitutes the offense.

§ 232. The act of each party to a conspiracy, in pursuance thereof, is the act of all.

§ 233. Husband and wife can not by themselves, without others, be guilty of a conspiracy, and the acts or confessions of either are not evidence against the other in a prosecution for conspiracy.

§ 234. Conspirators may be tried jointly or severally. But to prevent oppression by joining parties, and thus depriving some of the testimony of others, it is provided that in the trial of anyone for a conspiracy another charged as a coconspirator may be a witness, and in such case the two may be separately tried, though joined in the indictment.

§ 235. Where one is convicted of any offense, he is not liable thereafter to be tried for or convicted of a conspiracy to commit the same; and if a conspiracy to commit an offense and the commission of the same be charged in the same indictment, the defendant is liable to be sentenced for one only.

§ 236. On a prosecution for conspiracy, if the jury find, or the magistrate having jurisdiction of the fact consider, the offense to be trivial, the defendant shall be discharged, with or without costs, in the discretion of the court.

§ 237. Conspiracy to commit, or to instigate to the commission of, a felony; or to charge anyone with felony; or to prevent, obstruct, defeat, or pervert the course of justice; or to forge, or counter-

Exhibit Q—(Continued)

feit, or cheat, to an amount exceeding one hundred dollars, is in the first degree, and shall be punished by imprisonment at hard labor not more than ten years, or by fine not exceeding one thousand dollars, in the discretion of the court.

§ 238. A conspiracy to establish, create, manage, or conduct a trust or monopoly in the purchase or sale of any commodity is in the second degree, and shall be punished by imprisonment at hard labor not more than two years, or by fine not exceeding ten thousand dollars, in the discretion of the court.

§ 239. Conspiracy not appearing to be in the first and second degrees is in the third degree, and shall be punished by imprisonment at hard labor not exceeding one year and by fine not exceeding four hundred dollars, in the discretion of the court.

Note To Chapter 28

§ 299 is P. C., ch. 28, § 1, amended S. L. 1892, ch. 102. §§ 230-237 are P. C., ch. 28, §§ 2-9. §§ 238-239 are S. L. 1892, ch. 102.

Cases in Hawaiian Reports: *Rex. v. Anderson and Russell*, 1 Haw., 41; *King v. Thornton*, 4 Haw., 45; *Rex v. Ho Fon*, 7 Haw., 758; *R. v. Marks*, 1 Haw., 81; *R. v. Macfarlane*, 7 Haw., 352; *R. v. Walker*, 9 Haw., 171.

Chapter 38

Riots and Unlawful Assemblies

§ 373. Where three or more persons are, of their own authority, assembled together with disturbance, tumult and violence, and striking terror or tending

Exhibit Q—(Continued)

to strike terror into others, such meeting is an unlawful assembly, within the meaning of the provisions of this chapter.

§ 374. A riot is where three or more being in lawful assembly join in doing or actually beginning to do an act, with tumult and violence, and striking terror, or tending to strike terror into others.

§ 375. Menacing language, or gestures, or show of weapons, or other signs or demonstrations tending to excite terror in others, are sufficient violence to characterize an unlawful assembly or riot.

§ 376. Concurrence in an intent of tumult and violence, and in any violent tumultuous act, tending to strike terror into others, is a sufficient joining in intent to constitute a riot, though the parties concerned did not previously concur in intending the act. For example, where persons present at a public performance concur in the intent to disturb the same by tumult and violence, tending to strike terror; or concur in one or more acts of tumult or violence tending to strike terror, done by any of the assembly.

§ 377. It is not requisite in order to constitute an unlawful assembly or riot that persons should have come together with a common or unlawful intent, or in any unlawful manner; or that the object of the meeting, or the act done or intended, should of itself be unlawful. The tumult and violence tending to excite terror, characterize the offense, though the persons may have assembled in a lawful manner, and though the object of the meet-

Exhibit Q—(Continued)

ing, if legally pursued, or the act done or intended, if performed in a proper manner, would be lawful.

§ 378. Persons present at a riot or unlawful assembly, and promoting the same, or aiding, abetting, encouraging or countenancing the parties concerned therein by words, signs, acts, or otherwise, are themselves parties thereto and principals therein.

§ 379. In case of an unlawful assembly being by proclamation or otherwise ordered to disperse by any one having legal authority to disperse the same, any one voluntarily remaining in the assembly after notice of such order, except for keeping the peace, is thereby a party concerned in such unlawful assembly.

§ 380. Every person present in an unlawful assembly is presumed to have notice of an order given by lawful authority in lawful manner for the same to disperse.

§ 381. Whoever is guilty of a riot or unlawful assembly, having for its object the destruction or injury of any house, building, bridge, wharf, or other erection or structure; or the destruction or injury of any ship or vessel, or the furniture, apparel, or cargo thereof, shall be punished by imprisonment at hard labor not more than two years, or by fine not exceeding five hundred dollars, and shall also be answerable to any person injured to the full amount of his damage.

§ 382. Whoever is guilty of being a party concerned in a riot or unlawful assembly endangering

Exhibit Q—(Continued)

the life, limb, health, or liberty of any person, or in any other riot or unlawful assembly not of the description designated in the above section, shall be punished by imprisonment at hard labor not more than five years or by fine not exceeding one thousand dollars.

§383. In case of any riot or unlawful assembly in any town, village, or district, it shall be the duty of every district magistrate there resident, and also of the chief sheriff, sheriff of the island, and his deputies, and of the prefect of police for said town, village, or district, to go among the persons so assembled, or as near to them as may be with safety, and in the name of the government to command all the persons so assembled immediately and peaceably to disperse; and if the persons shall not thereupon so disperse, it shall be the duty of each of said officers to command the assistance of all persons present in seizing, arresting, and securing in custody the persons so unlawfully assembled, so that they may be proceeded with for their offense according to law.

§ 384. If any persons riotously or unlawfully assembled, who have been commanded to disperse by the chief sheriff, sheriff, deputy sheriff, prefect of police, or district magistrate, shall refuse or neglect to disperse without unnecessary delay, any two of such officers may require the aid of a sufficient number of persons in arms, or otherwise, as may be necessary, and shall proceed in such manner, as in their judgment shall be expedient, forth-

Exhibit Q—(Continued)

with to disperse and suppress such unlawful, riotous, or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law.

§ 385. Whenever an armed force shall be called out for the purpose of suppressing any tumult or riot, or unlawful assembly, or to disperse any body of riotous men, such armed force shall obey such orders for suppressing the riot or tumult, or for dispersing and arresting the persons who are committing any of the said offenses, as they may receive from the chief sheriff, sheriff of the island, or prefect of police, and also such further orders as they may receive after they shall arrive at the place of such unlawful, riotous, or tumultuous assembly, as may be given by any two of the magistrates or officers mentioned in the preceding section.

§ 386. If by reason of the efforts made by any two or more of said magistrates or officers, or by their direction, to disperse such unlawful, riotous or tumultuous assembly, or to seize and secure the persons composing the same, who have refused to disperse, any such person or any other person then present, as spectators or otherwise, shall be killed or wounded, the said magistrates and officers and all persons acting by their order or under their direction shall be held guiltless and justified by law, and if any of said magistrates or officers, or any person acting under their authority or by their direction shall be killed or wounded, all the persons so at the time unlawfully, riotously, or tumultu-

ously assembled, and all other persons who, when commanded or required, shall have refused to aid and assist the said magistrate or officers, shall be held answerable therefor.

Note to Chapter 38. §§ 373-386 are P. C. ch. 38, unaltered.

Admitted.

DEFENDANT'S EXHIBIT R

House of Representatives

56th Congress—1st Session—Report No. 305

Government for the Territory of Hawaii

February 12, 1900—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Knox, from the Committee on Territories, submitted the following Report
(To accompany H. R. 2972)

The Committee on the Territories, to whom was referred the bill (H. R. 2972) to provide a government for the Territory of Hawaii, report the bill with sundry amendments (those parts added by the committee being printed in italics and those stricken out indicated by lines drawn through the type) and, as amended, recommend that the bill pass, and with this recommendation submit the following report:

The Judiciary of the Territory of Hawaii and
of the New Territory After Its Organization
The following report of the Hawaiian Commis-

sioners, signed by the Hon. John T. Morgan and W. F. Frear, one of the justices of the supreme court of Hawaii, is submitted as being a full and comprehensive statement, and applicable at the present time to the jurisprudence of the Hawaiian Islands:

Report of the Committee on Judiciary

Hawaii having been hitherto a single independent State, its courts have exercised much of the jurisdiction exercised by both the Federal and State courts in this country. In this respect the Hawaiian courts have resembled somewhat the courts of the Territories of the United States, which, as a rule, have had much Federal jurisdiction, as well as jurisdiction of cases arising under the Territorial laws. It seems very desirable in the case of Hawaii to separate these jurisdictions, leaving all cases arising under the laws of the Territory to the Territorial courts and transferring all jurisdiction of a Federal nature to a district court of the United States to be established for the Territory of Hawaii. This district court should have also the jurisdiction of a circuit court of the United States.

There are many reasons which make this separation of jurisdictions desirable. The foreign shipping already calling at the ports of Hawaii, as well as the shipping from the United States, is very extensive and is rapidly increasing. With the natural growth of commerce on the Pacific, and especially in view of the change in the ownership of the Philippines, the near completion of the

Siberian Railway, and the projected Nicaraguan Canal, the shipping that will call at the Hawaiian Islands will undoubtedly increase more rapidly in the future than it has increased in the past. This will give rise to many important admiralty cases in Hawaii, some of which may become matters of international interest.

It is obviously very desirable that jurisdiction over such cases should be exercised by Federal judges. Again, in the event of war, Hawaii may become a center for the trial of prize cases, of which the Federal courts should have exclusive jurisdiction. By making the relations between the Territorial courts of Hawaii and the Federal courts, as to appeals, removal of causes, etc., the same as the corresponding relations between the State and Federal courts, all cases of a local nature can be tried and determined finally in the islands, and thus the expense and delay of bringing such cases to the mainland, and possibly to Washington, a distance of 5,000 miles, will be avoided.

Very little change need be made in the organization of the territorial or local judiciary. The organization and procedure of the Hawaiian courts is already very similar to what is found in the United States. This has been the result of a growth of sixty years of constitutional government in Hawaii under American influences. The judiciary department, unlike the executive and legislative departments, has always been free from politics. The people of Hawaii have great confidence in their judiciary, and have always looked to it as the one

impregnable bulwark of their liberties. The last two sovereigns under the monarchy, who did so much to lower the standard of the executive and legislative departments, did not dare to encroach materially upon the judiciary department until the final attempt of the Queen, which resulted in the loss of her throne.

The people of Hawaii, of all classes, as shown by the memorials presented to the commission, desire the judiciary, as at present organized, to be retained with as little change as possible, with the exception that they generally deem it best that there should be a United States district court to take jurisdiction of Federal cases. The one change which it seems desirable to make in the local judiciary is the abolition of the racial and mixed juries. Hitherto, in criminal cases, foreigners have been tried by juries composed of foreigners, and Hawaiians by juries composed of Hawaiians, and civil cases, if between foreigners, have been tried by foreign juries; if between Hawaiians, by Hawaiian juries; if between foreigners and Hawaiians, by juries composed of an equal number of foreigners and Hawaiians.

It is now proposed to abolish these race and mixed juries and to require instead merely that juries shall be composed of citizens of the United States who understand the English language, without respect to color or blood. As the Hawaiians will become citizens of the United States and as most of them understand the English language, the greater portion of them will be competent to sit on

juries. The requirement that they shall understand the English language is designed not to exclude the Hawaiians, but to avoid the expense and delay that would result if all proceedings had to be gone through in both languages through an interpreter.

The Hawaiian judiciary may be briefly described as follows:

There are three sets of courts—a supreme court, superior courts of record, and local courts—corresponding to the three classes of courts usually found elsewhere. They are called the supreme court, the circuit courts (five in number), and the district courts (twenty-nine in number).

The district courts sit without a jury. They have jurisdiction in criminal cases, over misdemeanors, and in civil cases up to \$300 except in cases of slander, libel, malicious prosecution, false imprisonment, seduction, breach of promise of marriage, and cases involving title to real estate. The civil jurisdiction is exclusive up to \$50 and concurrent with that of the circuit courts from \$50 to \$300. A general appeal lies in all cases, civil and criminal, to the circuit court, or an appeal solely on points of law may be taken to either the circuit or the supreme court.

The circuit courts sit with a jury, unless jury is waived, for the trial of most original law cases not begun in the district courts and in cases appealed from the district courts. The circuit judges sit without a jury in equity, admiralty, probate, and bankruptcy cases. Part of this jurisdiction will now be turned over to the United States district judge.

There has as yet been no fusion of equity and law cases. Equity and law courts, as under the Federal system, are regarded as distinct, although presided over by the same judges. Exceptions lie from the circuit courts in law cases and general appeals in equity cases to the supreme court.

The supreme court consists of a chief justice and two associate justices. It hears appeals, exceptions, and writs of error from the circuit and district courts, and has original jurisdiction of contested-election cases, claims against the government, and the issuance of certain writs, such as habeas corpus, prohibition, mandamus, and certiorari. In case of the absence or disqualification of a justice, his place in any particular case may be filled by a circuit judge or member of the bar.

The chief justice and associate justices are appointed by the President (hereafter the governor), with the advice and consent of the Senate, and hold office, like the Federal judges, during good behavior. The circuit judges are appointed in the same way and hold office for six years. The district judges are appointed by the President, with the approval of the Cabinet (hereafter by the governor alone), and hold office for two years.

The chief justice and associate justices are all of American descent and are graduates of Eastern colleges and law schools. The circuit judges comprise two Americans, one Englishman, one Portuguese, and one Hawaiian. The district judges are mostly Hawaiians, but some of them are Americans and English.

There is a clerk of the judiciary department,

with deputies, who are also clerks of the circuit courts. There are also stenographers and interpreters. The executive officers of the courts are a marshal of the Republic (hereafter chief sheriff of the Territory), sheriffs of the several circuits, deputy sheriffs of the several districts, and policemen.

The procedure in the various courts is much like that in the United States. The same is true of the laws administered by the courts. The statute law is largely copied from statutes (State or Federal) in the United States, and in the absence of statute law in a given case the common law is followed. American and English cases are cited, as in the United States. The supreme court law library contains over 5,000 volumes of well-selected law books.

There are also special courts for the trial of cases relating to private ways and water rights. These are presided over by "commissioners of private ways and water rights." These courts are of about the grade of district courts, but their jurisdiction is chiefly in the nature of equity jurisdiction. A general appeal lies from these commissioners to the supreme court.

There are two classes of lawyers, namely, those admitted to practice in all the courts and those admitted to practice in the lower courts only. The former are mostly Americans, but include a number of Hawaiians; the latter are mostly Hawaiians.

To this report it may be added that the foundation of the legal system of the islands is the common law of England, and that the penal laws and

practice is codified, and there are no penal offenses except those enumerated in the code. The civil law in its practice and procedure is partially codified.

In view of the foregoing report it must be considered wise and safe to provide for the organization of the Territorial courts of the Territory of Hawaii by substantially continuing them as now existing under the Republic of Hawaii, and this has been done in the present bill. The reasons also stated in the report for the separation of Federal and Territorial jurisdiction and the creation of a new judicial district of the United States for the islands and the establishment of a district court sufficiently explain and sustain the provisions for such a court in section 87 of the bill.

The provision in the preceding section 83 for mixed juries is also in accord with the recommendations of the report submitted. The provision in section 83 for a grand jury was for the purpose of providing machinery for the indictment of criminals until the first legislature could perhaps make more permanent provisions, and it was rendered absolutely necessary from the fact that the grand-jury system had not prevailed in Hawaii before that system was rendered necessary by the provisions of this bill extending the Constitution and laws of the United States to the Territory of Hawaii. The same reason—that is, extension of the constitution and laws of the United States to the islands—rendered necessary the further provision of the section providing for unanimous verdicts of juries.

Admitted.

Miss Lewis: Now, for the Court's attention, we have the testimony of Wong, Acting District Magistrate, which was stipulated to subject to certain objections, and I had three sets. I sent back for the third one. I thought I would leave those for the Court's convenience. It is not a new matter.

Judge Biggs: Very well. This is already in evidence.

Miss Lewis: There are certain corrections which you made and you wanted to append a sheet of those corrections. It is all right with me. I don't know where they are myself.

Mrs. Bouslog: Well, I furnished you a copy of corrections that were made. It is in the record, Miss Lewis.

Miss Lewis: I have the three now. Well, I mean in connection with these copies, Mrs. Bouslog. That's entirely up to you.

Judge Biggs: They have already been received in evidence, have they not?

Miss Lewis: They were appended; it was appended to a motion made and then a stipulation incorporated by reference, so this is a matter of convenience.

Judge Biggs: Yes.

Mrs. Bouslog: I will see that copies of correction sheets are attached to it. [8]

Judge Biggs: Very well.

Miss Lewis: Now, I think that possibly these matters should be left until later. I thought it would be appropriate to review this because in and

among the arguments, which I assume won't be transcribed in full if we are making briefs, there are some matters that should go in. I think that that should possibly come later. And also our motions to strike might be renewed at the end of the argument.

Judge Biggs: Well, we will treat your motions to strike as renewed. We will treat them as continuous, as a matter of fact. They can be so treated at least until the case is disposed of. Now, I don't think you need go beyond that, Miss Lewis, or Mrs. Bouslog either. She has certain offers of yours, certain testimony, certain exhibits which were received on the same basis. The Court will treat all motions to strike as outstanding until disposed of by formal order of the Court.

Miss Lewis: Well, in my argument perhaps I will have occasion to refer to them.

Judge Biggs: I was thinking, there is a little question about what you have to say about transcription of the argument. Of course, what Counsel say by way of argument is not part of the record except as it embraces stipulations that are binding. I think in all probability that record will have to be transcribed, that is, the argument will have to be [9] transcribed. Oh, you are referring only to the argument which took place here at the beginning?

Miss Lewis: Yes, your Honor. This is the situation——

Judge Biggs: I didn't understand what you had in mind.

Miss Lewis: If the Court will give me just a few minutes, sometimes considerable time is saved by such review. The Court made a statement from the bench on April 15, 1948, before we went to argument which indicated that we should take up our motions first. That would certainly have to be transcribed. Then we went into the argument and citations of authorities, and I had not presumed that all of that would be written up.

Judge Biggs: I think you are correct about that. I see no point in writing that up since the matter will be thoroughly briefed anyway.

Miss Lewis: However, on the morning of Friday, April 16, according to my notes Mrs. Bouslog secured a ruling that her bill of particulars in one case could be entered in another.

Judge Biggs: Yes, that should be transcribed, of course.

Miss Lewis: Then on the afternoon of April 16, 1948, in the course of her argument Mrs. Bouslog made certain offers of proof, or referred to what she deemed the facts to be, and I feel that should be transcribed.

Judge Biggs: Should be transcribed? [10]

Miss Lewis: Yes, your Honor.

Judge Biggs: Yes, I agree, we agree.

Miss Lewis: On the morning of April 17, 1948, there was a similar matter concerning an offer to show that the Grand Jury as constituted constituted a flagrant violation, and I think that should be transcribed.

Judge Biggs: You want the adjective particularly transcribed, is that it, Miss Lewis?

Miss Lewis: Well, if the Court please——

Judge Biggs: Just a moment. Yes, that should be transcribed.

Miss Lewis: There is some material along that line on that morning. I meant anything along that line.

Judge Biggs: Yes.

Miss Lewis: On April 19, 1948, of course the Court denied our motions and reserved some, and that should all appear.

Judge Biggs: Of course, there is a formal order in each case to that effect, you know.

Miss Lewis: I see. I had not been through that.

Judge Biggs: You haven't seen those orders? They were handed down at that time, at the time we made our ruling. Of course, it should be transcribed as well. It should be transcribed.

Miss Lewis: Then on April 20, 1948,—I think it was [11] possibly the 21st—there won't be any difficulty because I have had that part of the record transcribed. The Court gave a ruling concerning the identity of particular parties.

Judge Biggs: I don't quite recall that. Oh, yes, I do. Yes, I remember. Yes, that should be transcribed.

Miss Lewis: That was before the trial.

Judge Biggs: Yes.

Miss Lewis: Then, of course, the trial opens on the morning of April 23rd and continues through

April 27th, and that would naturally go in in full.

Judge Biggs: Well, of course, all of the taking of testimony, all the evidence will have to be taken, transcribed in full, every bit of it.

Miss Lewis: Yes, of course, your Honor.

Judge Biggs: And the accompanying rulings. In other words, from the point we began to take evidence until the conclusion you will have to have your entire record there.

Miss Lewis: Yes, I understand. But what I did want to suggest was that, although we closed the trial on April 27th, since we have cleared up some of the matters in the record this morning, I think that much of today's proceedings at least should be included.

Judge Biggs: I think so. It will be so ordered. Now, Mrs. Bouslog, what have you got?

Miss Lewis: I have some more. [12]

Judge Biggs: Oh, my apologies.

Miss Lewis: There is Exhibit "N" which incorporates a statement that Captain Seabury testified was made by Makekau and it was real. We shortened the proceedings, as I remember it, and in effect it constitutes what Seabury said Makekau said, and I think that should appear in the transcript. While it is just an exhibit——

Judge Biggs: Now, your interpretation of it now appears. I don't remember the incident sufficiently clearly to be able to characterize it at this time, but you have now characterized it and what you have said will be transcribed.

Miss Lewis: Well, if that is the way the Court wants to leave it. It was just that the exhibits are one set and the transcripts are three. And I thought what was in the nature of testimony that was shortened out in the record not be shortened.

Judge Biggs: You really did not object on the ground that it is hearsay? What you want is to have it shown that it is hearsay?

Miss Lewis: No, if the Court please. I wanted the entire statement actually typed in the transcript.

Judge Biggs: Very well. That is easy.

Miss Lewis: That was the nature——

Judge Biggs: Let the entire statement then be typed into the transcript. [13]

Miss Lewis: That was the nature of it. Thank you. The Court asked us for some summaries of statutes about sentences which Mr. Crockett has prepared here.

Judge Biggs: Yes. Pass them on to the Clerk, please.

Miss Lewis: I hate to take the Court's time with these things but we are under a temporary restraining order and I do think that it would be appropriate to have some setting of time for briefs in that situation.

Judge Biggs: Well, we will set times, approximate times. Let's get the argument through first, and we will do that. Is there anything else along this line? Oh, yes, this particular exhibit which Mrs. Bouslog has offered, the names, the Filipino names, how is it marked?

Mr. Crockett: If the Court please, this is marked "Plaintiffs' Exhibit No. 22-B." I'd like to call the Court's attention that there is nothing either on the marking on the outside or on the note accompanying them which shows by whom these checks were made. And apparently they have just checked the names. It says "Names before which a red question mark appears are probably of Filipino descent." There is nothing to show whether those are persons of pure Filipino descent or persons of only part Filipino descent, because in the County of Maui there are quite a number of persons who have Filipino names who have descended from Hawaiian mothers and Filipino men. [14]

Judge Biggs: Have you any objection to the form?

Mr. Crockett: Well, I would like to have Counsel state in the record at least by whom these checks were made.

Judge Biggs: Who did the checks?

Mrs. Bouslog: These checks were made by Reverend Yadao, who has lived in the County of Maui all his life.

Judge Biggs: What is the minister's first name, do you remember?

Mrs. Bouslog: Emilio. With consultation with some union representatives who were also in from Maui County. I ask that the Court receive it for what it is worth. I think it appears on its face exactly what it is.

Judge Biggs: Mr. Crockett, you do not object as to form? You merely object as to relevancy?

Mr. Crockett: Well, I object to relevancy, if the Court please, and as Counsel has stated, we object to it, that is, that the Court will accept it for what it is worth. In other words, I can see that there are quite a number of inaccuracies in this.

Judge Biggs: Well, we will receive it for what it is worth, and you may have the opportunity to check through the list and make any corrections, and we will receive the corrections as well, if you desire to file that now. Now, does that conclude what Counsel have to say about these exhibits? Is there any other matter? [15]

Mrs. Bouslog: Both of these should be included in 22. That is part of it.

Judge Biggs: Now, the Court desires to state to the Counsel that in reference to any question which the Court may have in regard to any of these matters, the Court reserves the right hereafter to refer to any standard text or texts or subject matter which the Court may deem appropriate. Now, before we begin the argument, since we have taken a little time on this question of record, it seems desirable to state what the Court has in mind. There are three Judges, and I propose, we propose, when the argument has been concluded, and as soon as copies have been substituted for those exhibits which are exhibits in Territorial Courts, to have copies sent to the Judges, and to have the record transcribed. I mean the record, what would be called the old common law record, the true record copied and three copies made on the mainland in my

office by my office force, or in connection with my office force, so that each of us may have copies, may have copies as promptly as possible and the record may be returned here. How long would it take you, Mrs. Bouslog, to get your brief in chief and your request for findings of fact and conclusions of law filed after this argument?

Mrs. Bouslog: I would say 30 days from the time of receiving the transcript.

Judge Biggs: Very well. Thirty days from the time of [16] receiving the transcript. How long would you need, Miss Lewis?

Miss Lewis: If the Court please, we would like an equal time and I hope the Court will appreciate that we are not trying to take the Court's time for nothing. Here is the situation: we are under a temporary restraining order. I went and asked the reporters how long it would take them to get this out, and they have other work and they said they'd try to get it out in two weeks but it might be a month. So that would be the end of May. And if Mrs. Bouslog says in a month, then we are entitled to equal time. It would be the end of July. And in one of these incidents it will be two years in October, 1948, and we have a two-year statute of limitations. Now, the statute says that if a warrant is issued, the statute does not run. In that case, too, an indictment was issued. But suppose the Court should in effect throw the indictment out, how the statute would apply if we had to change the charge has not been determined

to my knowledge. I feel that we should not get up to that date.

Judge Biggs: Well, we will endeavor—of course, your record here isn't a very big record really. I think that if the reply brief were in our hands or in the Clerk's hands, Mrs. Bouslog's reply brief to your brief were in our Clerk's hands by two weeks after the filing of your brief,—and I think she should be able to meet that date—it would be about [17] the middle of July. And when is your statutory period—October?

Miss Lewis: Well, yes, your Honor. October 19th, isn't it?

Mr. Crockett: Sixteenth.

Miss Lewis: Sixteenth, 1948. I believe by the time we had 30 days to meet their 30 days we will have reached the end of July. So that would be the middle of August, after two weeks for reply.

Judge Biggs: That would mean the Court would have to move fairly promptly in getting this thing in shape to meet that date, to give you any time at all. That would have to be the middle of July.

Judge Metzger: Two months.

Judge Biggs: Two months and a half really. Well, let's see now. Thirty days after the record. That might take a month. That would take the month of May. June, July 15th, and that would leave half of July, August, September, two and one-half months, and will leave you approximately 16 days and no more. It is pretty short.

Miss Lewis: Well, if the Court please, perhaps

I haven't told the Court, if Counsel takes the month of July for briefs, then wouldn't we have an equal time?

Judge Biggs: Oh, yes.

Miss Lewis: Oh, yes, I'm sorry. Counsel takes the month of June for briefs and we would take the month of July, would [18] we not?

Judge Biggs: Yes, you would take the month of July.

Miss Lewis: Then what would follow?

Judge Biggs: Then there would be a reply brief, if Mrs. Bouslog would want to reply to that, and I think she should have two weeks for that. So you then come to August 15th. Let's begin again. Assume that it will take the whole of May to get the record. That would take you into June, July, August 15th for the reply brief. And, as I say, I want the briefs to be accompanied with requests for findings of fact and conclusions of law.

Miss Lewis: Yes.

Judge Biggs: And don't make them too long, ladies, don't make them too long. After all, there is no use writing 180 requests for findings and then have the Court adopt seven or something of that sort. So that we would not have the case under submission until August 15th. And that would leave us only September and October, two months before you have actually reached your expiration date on the statute of limitations.

Miss Lewis: That is why I brought the matter up.

Judge Biggs: Well, all I can say is that the Court will do the best it can. It is not a very long record and, of course, there are some intervening situations which are rather difficult. A conference of Senior Circuit Judges meets, as you know, usually in the third week of September, and our [19] circuit conferences all come before that time. And all the Court can do is do the best it can. Angels can do no more. You pointed out the situation, and we will try to meet it. We don't guarantee to meet it but we will do the very best we can.

Miss Lewis: I will try to get the *reporters* get the record out earlier if possible.

Judge Biggs: Now, I think we have consumed some 40 minutes. We might as well take a brief recess and then start Mrs. Bouslog's argument. The Court will stand at recess for a few minutes.

(A short recess was taken at 10:37 a.m.)

After Recess

Mrs. Bouslog: Your Honors, Hawaii's growth from the culture and crafts of the Polynesians in the early 19th century to the agricultural-industrial empire which it is today is unique. A thumbnail sketch of the history is necessary to understand the facts of the case. The Plaintiffs have put in as exhibits in this case lists of island communities, the 1939 government report to the Congress on the conditions of labor in the Hawaiian Islands. And the testimony of John Reinecke before Judge Cristy supplies some of the facts of this history that are necessary to an understanding of the setting in

which this case takes place. It must be remembered that in the late 19th century, as is shown by these documents, indentured slavery, forced labor still survived in the plantation system in Hawaii. With the annexation of the Territory to the United States in 1900, the protection of the Constitution of the United States was extended in form to the people of Hawaii, but it has not proved to be so executed.

The Plaintiff unions and the individual Plaintiffs are here before this Court complaining about the deprivation of very basic and fundamental human rights which they contend that the Defendants, acting under color of law, have deprived them of, all the matters of which this Court may take judicial knowledge. So that this is not a discrimination against working people and the individual Plaintiffs that came up yesterday, but it has been long continued, that method of jury selections has been long continued in Maui County.

The Plaintiffs come to this Court after appealing vainly to the Territorial Courts for relief. They have pursued every remedy available under Territorial law to the final stage that they can pursue it under the remedies afforded by Territorial law. They can appeal to the Territorial Courts no further without continuing to suffer serious deprivations of Constitutional rights which they contend threaten the existence of the union and the livelihood of the individual Plaintiffs.

The trade union Plaintiffs, and the individual Plaintiffs Rania and Kawano, testified that they bring this suit in [21] their representative capacities as officers and members, and individually for themselves. Their testimony and the testimony of Jack W. Hall, regional director of the ILWU, and Pedro de la Cruz, who was formerly president of the pineapple local on Maui, show the nature of the property rights, and the irreparable injury to the Plaintiffs in this case. The testimony, uncontradicted in the record, shows that the trade union Plaintiffs have spent in excess of a third of a million dollars since 1944 in organizing 30,000 workers in the pineapple, sugar, longshore and various other miscellaneous industries in the Territory; that in addition they spent a huge amount of money monthly for the administration and servicing of these locals. They showed that this money is contributed by the dues of the union members themselves. They show that the purpose of this union is to improve the wages, hours and working conditions of the employees in these industries. They show that there is no other way that the unions can obtain their objective in the Islands except after negotiation and mediation fails, because of a continued refusal to arbitrate any contract issues by the employers. They show that the fear generated by these mass arrests by the Defendants, under color of law, has seriously affected union membership. And the use of the statute, unlawful assembly and riot statute and the conspiracy statute, during

the sugar strike caused fear among the members, and that it [22] actually broke the pineapple strike, all because minor disturbances occurred on picket lines. This loss of the pineapple strike through the use of the technique of mass arrests demoralized the workers, and the testimony shows that the membership on the islands where a great many of the mass arrests occurred dropped from 1300 to 800 as a result of the loss of the strike and the mass arrests.

After the refusal of the employers in the longshore industry to grant the union's demand for parity with west coast rates, the longshore union had but one choice, to strike or to accept the employer demands. And because their negotiating committee in conference decided that it will be suicide in the presence of a threat of these statutes to do anything except accept the terms offered by the employers.

The Plaintiffs have established by the testimony of Mac Yamauchi and by exhibits offered at the time his testimony was offered that 21 workers were charged with unlawful assembly and riot at Lahaina during the sugar strike, and that they were charged with conspiracy, and that subsequently the Defendants conceded the impropriety of these charges by dropping them and proceeding on the assault and battery charges. But this was after the strike was over. The serious felony charge and the conspiracy charge had had its effect in the course of the strike.

Now, the Assistant Chief of Police Freitas stated before [23] your Honors that Mac Yamauchi had

signed a statement saying that he ordered people to go out and beat up a couple of haole supervisors. The record of his statement was before your Honors, and your Honors will find that he said no such thing, and that he told he was the picket captain, that he dispatched groups of men everywhere to check up on the activities that were going on; that he told them to use their own judgment. And when they asked him what they should do if they were attacked, he said that they should defend themselves. But if they were attacked.

They have also established by the testimony of Nicholas Sibolboro and myself, and by the cross-examination of the police witness brought in by the Defendants, that during the pineapple strike on this island a large group of people, 83, were arrested for or under the guise that they were guilty of unlawful assembly and riot; that subsequently, after they had been held all day, they were finally charged with obstructing the highway. And even those charges were dropped at a later time after the strike was over.

The Plaintiff has shown that the mere existence of the statute and its use by the Defendant, as used by the Courts in the Territory, including the Defendant Wirtz, had created a presumption that picketing in any larger number than three is not peaceful picketing because it might turn into an unlawful assembly. [24]

The threatened irreparable injury to the Plaintiff by the destruction of the strike weapon, the

value of property rights to the individual Plaintiffs, was established by the testimony of Jack Hall, whose uncontradicted testimony shows that the union has through collective bargaining and strike actions increased the minimum wage in the sugar industry from as low as 25 cents, including bonus, prior to the first union contract, to a minimum throughout the industry of 78½ per hour under the existing contract. It shows that the daily earnings of plantation labor which were fixed by the Secretary of Agriculture under the Sugar Act in 1943 as a minimum of \$1.83 per day have increased to an average of \$8.00 a day and to a minimum of \$6.28 a day.

The threat of the loss of job, of housing, to the individual Plaintiffs is proved by the testimony of Mac Yamauchi, who testified that ten members were fired by Pioneer Mill Company on the mere bringing of the charges of unlawful assembly and riot, on the guise that people had violated the house rule. It was also shown by the introduction of house rules now in effect in the pineapple and sugar industries that the employers purport to reserve to themselves the right to discharge people for things which they consider morally reprehensible.

Jack Hall also testified that there is no other employment available for plantation workers in the islands. The Court [25] has judicial knowledge of the fact that to daily wage earners the loss of wages during long-extended trial, the cost and time involved in mass trials and appeals, is a serious bur-

den. The Court also had judicial knowledge of the fact that the reputation and good name of any man and his right not to be tried with a serious felony charge of which he is not guilty is a valuable property right.

Your Honors will recall that in the case of AFL versus Watson the Supreme Court considered whether the trade unions in that case who brought suit to restrain the enforcement of the provision of the Constitution had met the strict tests laid down by the court in the Jeannette case for the restraining of the enforcement of the provision of the Constitution, and for and against the criminal proceedings threatened by the Attorney General of the state under the Constitution. And the Court, the Supreme Court, said that the allegations concerning the disruption of collective bargaining, the loss of bargaining position by the unions, the almost certain decrease in union membership, satisfied the strict test laid down in the Jeannette case for the maintenance of a suit in equity to restrain threatened criminal prosecutions under the state law. But the proof does not stop here. They have shown that they come within the rule laid down by the Supreme Court in Snowden versus Hughes, by showing that they as party participants in labor disputes have been singled out from [26] other groups in the community and prosecuted under the unlawful assembly and riot statute as it is applied to no other group or class of persons or citizens in the community.

Mr. Crockett, one of the Defendants, testified that in his 30 years as Deputy Prosecutor for the County of Maui the statute has not been invoked against any other group except participants in labor disputes. The statute lay on the books for almost a hundred years before it was brought out to be used against the labor unions.

In the Plaintiff's argument against the Defendant's motion to dismiss and in support of their request for a preliminary injunction we showed that the Supreme Court of the United States in the case of *Bridges versus California* stated specifically that no purpose was clearer in ratifying the Bill of Rights than to get rid of the restraints on freedom of assembly which were prevalent in England at the time when the Constitution was adopted. We showed that the Supreme Court referred specifically to the riot act of George I and the riot act of George III. And we have shown that the Territorial riot statute patterns almost all the way through the very riot act of George I, which the Supreme Court said Congress itself would not have the power to adopt in this country.

In the course of these hearings it has developed that there are two other statutes which purport to authorize [27] punishment for rioting and loitering. Section 11733, to which we will refer later, and Section 11711, which provides that every person who is dangerous or disorderly by reason of being a rioter, a disturber of the peace, going offensively armed, uttering menacing or threatening speeches, or other-

wise, is a vagrant and shall be punished by a fine of not less than Ten nor more than Five Hundred Dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment. It is not noteworthy the use of the exact same language that is used in the unlawful assembly and riot statute which is a felony for which a person may be punished by 20 years.

Thus the prosecuting officials and the Grand Jury under the existing statutes can choose whether to charge rioters for exactly the same offense as a misdemeanor or a serious felony, leaving to their sole discretion which groups shall be singled out for the harsh and discriminatory treatment of the felony statute.

In *Thornhill versus Alabama* the Supreme Court of the United States struck down a statute as unconstitutional on its face for the very reason that it could be, or that it permitted local law enforcement officers to single out a particular group which might warrant their displeasure. Thus the Court says:

“The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local [28] prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. It is not any less effective or, if the restraint is not permissible, less

pernicious than the restraint on freedom of discussion imposed by the threat of censorship.”

No clear case surely could be made of the singling out of harsh treatment by the Defendants of a particular class of persons deemed to warrant their displeasure than it has been shown here.

Now, let us look at the Paia incident, the incident that occurred at Paia on October 16, 1946. The record shows that beginning September 1, 1946, 20,000 sugar workers in the Territory were on strike. It shows that they went on this strike after a strike vote by which they were authorized by 40—by 97 per cent of the employees in the sugar industry. It shows that at the town of Paia, Maui, where the Maui Agricultural Company is located, that a thousand, one thousand employees are on strike. It shows that in the town of Paia, the people who live in the town are the very people who were on strike, and their families, with very few exceptions of supervisory employees and others. It shows that for the first 45 days of a 79-day strike large groups of picketers peacefully picketed and used the streets for their striking activity [29] without any violence, peaceful activity. And all of a sudden, on the 16th day, the same activity that they had been carrying on peacefully for 45 days became an unlawful assembly and riot. It shows that at the time when this incident is supposed to have happened there were at least 20 police officers present. It shows that there were approximately—the estimates run from 250 to 500 persons. It shows that on the 16th day of October, while this picket line was in motion,

moving, walking picket line, not interfering with traffic, as your Honors could see by the picture, that five strikebreakers and 18 or 20 police officers were present. Now, when the strikebreakers approached the picket line and it did not open up, the police officer called the pickets together so that he could read the law to them. And what did he read? He read the loitering statute, Section 11773, which provides that no person shall loiter or stand upon the public highway thereby imperiling or endangering others; that they, if arrested and found guilty, shall be punished as a misdemeanor and fined not less than 25 nor more than 250, or imprisoned for not less than 30 days nor more than 90 days.

Now, before the pickets had resumed their walking of the picket lines, the strikebreakers attempted to push through the pickets at the point; at that point the pickets pushed back. The police officers told the strikebreakers to go home, didn't tell the pickets to go home. He told the [30] strikebreakers to go home. And the picket line resumed its activity and continued to peacefully picket for the rest of the day. This whole trivial incident took no more than two to three minutes. The Assistant Chief of Police, the record shows, congratulated the people on keeping their head. He congratulated Joseph Kaholokula, named as the first Defendant in this case, for helping him get all the people to listen to him, and told him immediately thereafter that he was glad nothing serious had happened. The only thing he indicated was that two or three of the

pickets might be charged with loitering, with a violation of the loitering statute. With 20 police officers present, not one single arrest was made, until two days later when there were 79 of the people arrested and charged on a sworn complaint by the same police officer that they were guilty of violating the unlawful assembly and riot statute. They were arrested, questioned, without being warned of their Constitutional rights, required to put up bail in some cases as high as a thousand dollars each. And subsequently, after this indictment, these 79 persons, including four who weren't there at all and one who had been dead for five years, were indicted by the Grand Jury of Maui County.

After the Defendants appeared in Court and were arraigned and demurred to the indictment, when the demurrer was overruled, with the permission of the Court they took an interlocutory [31] appeal to the Supreme Court of the Territory. The Supreme Court decision in that case was handed down, I believe, the last part of November. At that time, before the remittitur from the Supreme Court had gone down to the Second Circuit Court advising them officially of the decision in the case, and at a time when this Court had restrained the Grand Jury, the 1947 Grand Jury, from indicting the Lanai Plaintiffs on the ground that the Constitutionality of the statute was being questioned, the method of the selection and composition of the Grand Jury was being questioned, while they were under a restraining order and without the legal

processes of the law they proceeded immediately to reindict 75 people, dropping four people who weren't there the first time but whose rights had been grossly abused for the full year period while they were under indictment.

It seems to the Plaintiff that these facts make manifest a purposeful and wilful discrimination against the Plaintiffs as parties participant in labor disputes. Surely thoughtful and unbiased action on the part of law enforcement officers would have dictated a stay of proceedings until at least the return day on the temporary restraining order issued by this Court. I think there is no better illustration than that of the Assistant Chief of Police and 20 police officers present, who didn't see anything happen, who made no arrest, but not until later, after consultation with the law enforcement [32] officers who weren't present, were the serious felony charges brought.

Now, the Defendants contend that this Court should not hear the Constitutionality of the method of selection of composition of the Grand Jury in case No. 836 because they say the Plaintiffs have either waived their rights or that they can still present them under the doctrine of Carter versus Texas, which invalidates in part the Territorial statute on Grand Jury challenging. The record, however, shows that Judge Wirtz disqualified himself from hearing any challenging of the 1947 Grand Jury because he was a Jury Commissioner ex-officio as Judge of the Second Circuit Court. It also shows

that Judge Cristy was designated by the Supreme Court of the Territory to hear the challenging to the 1947 Grand Jury in the Barbosa and in all other cases. The record shows specifically that Judge Cristy ruled that the proceedings in the Barbosa case, and I quote:

“ . . . or any other case lying before the Grand Jury, that are considered in this jurisdiction, may go forward.”

But apart from the clear record, it was the intention of Judge Cristy and the Supreme Court to determine once and for all the validity of the 1947 Grand Jury. It is obvious that it would be futile for the Plaintiff in the Kaholokula case to appear before the Second Circuit Court, have Judge Wirtz disqualify himself, request the appointment of a substitute [33] judge, and then go through the presentation of exactly the same facts that had been presented, that were presented to the Second Circuit Court in the Barbosa case.

The Civil Rights Act, Section 43 of Title 8, gives to every person deprived of rights guaranteed by the Federal Constitution, under color of Territorial law, a civil action in law or equity. Section 44, which prohibits the exclusion of jurors on account of race or color, specifically reserves the right for a civil suit in respect to jurors, in respect to improperly selected jurors, in regard to race.

Now, in respect to the Lanai case, the Lanai cases, the record shows that from July 10th to July 15th, 1947, the employees of the Hawaiian Pineapple

Company on Lanai were on strike. The Court may take judicial knowledge of the fact that 99.9 per cent of the land on the Island of Lanai is owned by Hawaiian Pineapple Company. The population of Lanai is approximately 3,600. And it is made up primarily of the 1,300 agricultural workers employed by the Company and of the families of these workers. All except a few of the employees live in the town of Lanai City, which is inland five miles or more from the harbor. Now, in these Company towns, your Honor, there isn't anything to do. When you are not working, there is nothing to do in Lanai City. There is nothing to do in Paia. So that all of the activity of the people on strike is to pour into the strike itself. [34]

In the case in which Makekau and four other people are charged with riot and unlawful assembly, we are not concerned with the question of whether or not there was in fact a violation of law. As I believe it was Judge Biggs that said:

“We are not here concerned with the guilt or innocence of any particular one of the Defendants (Plaintiffs) in relation to any particular incident.”

The only question we are concerned with is the taking of facts as they have been presented here, and in their worst possible light is there any justification for charging in the Makekau incident any more than a breach of the peace or assault and battery? No other citizens of the community are sin-

gled out under such circumstances for application of the riot and unlawful assembly statute.

So much has been written about labor disputes, so much has been written judicially, and your Honors have judicial knowledge of the fear of insecurity that drives men to strike in the first instance, and the economic motives which sometimes result in brief episodes of force against strike-breaking. It happens in most industrial disputes, that charges of breach of the peace, assault and battery, are ordinarily concomitants of the economic dispute itself.

But the Defendants in this case, following the established pattern that they had used in the sugar strike, were not content to follow the ordinary processes of criminal law, but [35] they again invoked the unlawful assembly and riot charge. The Makekau incident demonstrates clearly the consistent patterns which the Defendants followed in seeking to punish more harshly parties participant in labor disputes than any other classes or groups in the community.

The harbor incident occurred on July 14, 1947. There were present at the time six police officers and a group of pickets, spectators, and eight Company people who were working in connection with loading. The persons present were estimated by all of the Defendants' witnesses during the hearing before the District Magistrate as being about 120 to 150. One of those witnesses testified that he counted them. Yet Assistant Chief of Police

Freitas appears before your Honors and doubles the top estimate of any of the Defendants' witnesses in the District Magistrate's Court.

On the dock at that time were eleven men, and the record shows 5-day old pineapples, before the strike. A barge dispatched from Honolulu arrived at the harbor. The usual load of this barge is 152 pineapple bins, which is customarily shipped within 48 hours after the picking. When the top Company executives started to load the pineapple, some of the pickets who had been sitting on the walls crossed the kapu line, painted especially for the strike, and started throwing the pineapples off of the bins. You have seen the pictures, your Honors, of the 12 or 15 people at most throwing [36] pineapples off the top of the pineapple bins. The testimony shows that at least three carloads of people, one truck carrying 20 people and two private automobiles, came down after the incident was over. The testimony shows that there were people sitting peacefully on the sea wall at all times. At the very worst the testimony shows that one person received a bump and a bruise, one had jumped or fallen into the water, and some pineapples have been thrown out of the bins.

The police were apparently present not to keep order but as observers and takers of pictures. Three photographers, including the police identification officer, were stationed at various angles. Everyone was peacefully on the sea wall, before, afterwards, or during the incident, was photographed and

charged. So on the basis of pictures concededly taken in the morning and not in the afternoon when the incident happened, eleven Plaintiffs were arrested on the 15th and held incommunicado. They were questioned without being warned of their right to counsel or their right not to testify against themselves, and finally, the next day, released on excessive bail which was miraculously collected in the half hour allowed.

When these eleven people appeared before the Magistrate without being warned of their rights, without being advised of what their rights were, they waived preliminary hearing. It does not even appear from the record of the Court that an interpreter was present or that the Defendants understood [37] English.

Now, on August 1st, 15 days later, 56 other persons were charged by a sworn complaint that they had committed the offense of unlawful assembly and riot by Assistant Chief Freitas. When they appeared before the Magistrate on the 6th day of August, the Prosecutor announced that he was dropping the charges against four persons before the Defendants waived preliminary hearing. One of these four men, Henry Aki, appeared before you. He told you that he was known as a non-union man, that the police officer expressed surprise at his being charged, and that his Company superintendent told him that it was a mistake that he had been charged. It thus appears, then that the test was not being present at the harbor but was being present and being or belonging to the union.

When the Defendants refused on the 6th day of August to waive their preliminary hearing,—a most unusual proceeding of that kind—and demanded that the Prosecution proceed, the Prosecution refused to proceed, although the statute makes mandatory that the Magistrate proceed on the appearance of the defendant to determine probable cause. The Defendants were thereafter, we contend, illegally held. The preliminary hearing, over objections, was continued until the 22nd and again until the 29th of August, and a decision was not made until September 22nd. The whole character of the hearing [38] before the Magistrate can be shown by the suggestion of the Magistrate which appears in the record that the Defendants be excluded from the courtroom because they might be witnesses.

The rolls of film taken by Lieutenant Demello 10 to 15 minutes after the incident were admitted for the purpose of identification of people who took part in the incident, and remained in the record over the objection of the Defendants' Counsel when it appeared they were being used for identification and that they were not scenes of the incident. Stills represented to be made from these pictures were the only identification for a large number of the Defendants.

Police officer Takahama, who testified before the District Magistrate, testified one day that he recognized only seven individuals inside the kapu line among the crowd. After the night recess he re-

turned to the stand and reeled off a list of 27 additional persons whom he said he had recognized going back. Thereafter, the Prosecutor read off the list of defendants named by officer Takahama, adding to that list names that Takahama hadn't mentioned and had the witness identify them. This is all the identification there is of a large number of Plaintiffs. No more than eleven of the Plaintiffs were even cursorily identified in the action pictures or in testimony of witnesses as being inside the kapu line or as doing anything. That is out of the 56, your Honor. [39]

After Defense Counsel called attention to the failure to identify at all or even mention the names of some of the persons charged, the Prosecution moved to dismiss as to 12 persons. Obviously, these 12 persons with the knowledge of the Prosecution had been illegally held without any evidence whatsoever for two months. In oral argument before the Magistrate attention was called to the failure to identify, to the imperfect identification established, and the un-Constitutionality of the statute and its wrong application to the Defendants. Yet the Magistrate, after a month's delay and after he had had an opportunity to study the transcript, found that there was probable cause to believe that a jury would convict the Plaintiffs of the felony of unlawful assembly and riot. Surely no clearer picture of the total disregard of the Constitutional rights of the Plaintiffs could be created. And at its very worst, this three to four minute incident at

the harbor constitutes no more than an offense within the reaches and bounds of trespass or assault and battery, or disorder or malicious mischief in the ordinary confines of the criminal law.

The Defendants contend that the challenging before the Second Circuit Court or the composition of the Grand Jury in the Lanai case is moot, because they say the term of the 1947 Grand Jury has expired. Plaintiffs concede that the challenging for cause of the individual members of the 1947 Grand Jury are no longer in issue. But the Constitutionality of the method of selection and composition of the Grand Jury is still in issue.

The Defendants in the case before Judge Cristy contended throughout that their method was Constitutional, that the Jury that they selected in 1947 was a cross section, that the rules, that the method of applying the statute which they had followed were Constitutional. Judge Cristy ruled that the method followed was Constitutional. Your Honors will recall that in the Thiel case the Supreme Court held that if the method followed violates Constitutional rights by the exclusion of any group which goes to make up the required cross-section of the community, that even if the jury results in a cross-section, that the jury is still un-Constitutional because the method followed was in violation of and totally excluded certain representatives of the community. So we contend that this incident is not moot; for the reasons we have already stated the Grand Jury issue clearly is not moot in case 836 where the Grand Jury has indicted.

Plaintiffs Bill of Particulars filed herein and made a part of both Complaints enumerates the sum of the specifications, of the lack of due process in the hearing before Judge Cristy, and of the deprivation of Constitutional rights in respect to the Grand Jury by the Defendants under color of law. I cannot, your Honor, in the short time here go through the [41] 521 pages of transcript and enumerate one by one all our specifications of bias and prejudice and pre-judging and lack of due process before Judge Cristy, but the heart and substance of the Plaintiffs' case is, and of its claim for relief in this Court in respect to the Grand Jury is that by uncontradicted evidence we brought ourselves directly within well-established and well-defined rules laid down by the Supreme Court for the selection of Grand Juries, and we met the test of these cases, the test the Supreme Court had approved in these cases, and despite that fact we were given no relief. It appeared before Judge Cristy, and the Defendants here concede, that no person of Filipino nationality has ever been selected on the Grand Jury list or summoned as a Grand Juror, or summoned as a Grand Juror in Maui County up to and including 1947. They conceded that there are qualified Filipinos in Maui County.

Plaintiffs showed before the Second Circuit Court that Patrick Otello, who stated that he was of Filipino parentage, who went through the eighth grade in Hana school, who was employed by the Kahului Railroad Company, was marked disquali-

fied by the Jury Commissioners. None of them was able to state any reason for the disqualifying or the marking disqualified of Patrick Otello. None of them knew him. Plaintiffs showed and the Jury Commissioners testified that return questionnaires of haole and representatives of other [42] races bearing exactly the same qualifications on the face of the return questionnaire were marked qualified. Plaintiffs showed that at least seven or eight other questionnaires of Filipino citizens were marked questionable, although according to their return questionnaires they had qualifications equal to or greater than persons actually selected for jury service.

Now, Judge Cristy took judicial notice of the fact that "questionable" as used by the Jury Commissioners meant that they were going to investigate further rather than "doubtful" as is the usual sense of the word. However, it appeared in the record that the Jury Commissioners have no funds to make further investigations; that there is no manner, after a person is marked questionable, of getting him off the questionable list onto the list of qualified for jury service. The only explanation offered of the absence of Filipinos from the Grand Jury, although all Jury Commissioners admitted that there were qualified Filipinos, was by Commissioner Pombo, who testified that they had people who were better. The showing of the complete exclusion of Filipinos from the jury service in Maui County, although they constitute the second larg-

est group in the county, being 18.8 per cent of the population, coupled with the unexplained marking of Filipino return questionnaires, of Filipino persons, as questionable and not qualified, certainly makes out a case of ingenuous discrimination against the Filipino race. As the Court laid [43] down the rule in the long line of cases, from *Strauder versus West Virginia*, 100 U. S. 303, to the very recent *Patton* case—as a matter of fact, the *Patton* case is almost on all fours with the present case. There the judge refused to consider, as did Judge Cristy, that not only were they gross excluded from the particular venire but that no negroes had been selected for jury lists for a period of 30 years. The representative of the State of Alabama made the same argument that the Defendant made about the low percentage of qualified negroes compared with white persons, but the Supreme Court brushed such reasoning aside, saying:

“But whatever the precise number of qualified colored electors in the county, there were some, and if it can possibly be conceived that all of them were disqualified for jury service by reason of the commission of crime, habitual drunkenness, gambling, inability to read and write or to meet any other or all of the statutory tests we do not doubt that the state could have proved it. We hold that the State wholly failed to meet the very strong evidence of purposeful racial discrimination made out by the petitioner upon the uncontradicted showing that for thirty years or more no negro had served as a juror in the criminal courts of Lauderdale County.”

And then this is the rule laid down by the court: "When a jury selection plan, whatever it is, operates in such way as always to result in the complete and long-continued exclusion of any representative at all from a large group of negroes, or any other racial group, indictments and verdicts returned against them by juries thus selected cannot stand."

Plaintiffs contended and proved before Judge Cristy and here that the 1947 Grand Jury and the Grand Juries for the preceding five years wasn't just an accident but that it had been a practice and method of selection continuously followed by the same Jury Commissioners, that it was not a representative cross-section of the community, either economically or socially. Judge Cristy accused the Plaintiff of making out of the whole cloth antagonisms and racial prejudices. The Supreme Court has recognized that class prejudices do exist and has taken judicial knowledge of it. Blackstone recognized it. In *Strauder versus West Virginia*, the Supreme Court said:

"It is well known that prejudices often exist against particular classes in the community, which sway the judgment of jurors, and which, therefore, operate in some cases to deny to persons of those classes the full enjoyment of that protection which others enjoy."

Now, we have shown also that in addition to the judicial knowledge that this Court has that class antagonisms do exist, we have shown actual bias and prejudice that exist in Maui [45] County, that

ten of the number on the Grand Jury list were members of the Chamber of Commerce which before the strike adopted a resolution condemning the strike, condemning the union and accusing it of trying to wreck the industry of the Territory.

So that not only do we have a showing of the class prejudice of which this Court can take judicial knowledge but we show actual class prejudice. The foreman of the jury array which indicted the Defendants in the Kaholokula case was one of the movants in the adoption of that resolution.

Now, since there is such a welter of facts and such a short time to present it to the Court, I have prepared three charts which I think the Court can see quicker than I will be able to explain orally, which represent the information.

Judge Biggs: If you need the chart board, pull it over, please.

Mrs. Bouslog: Your Honor, this chart shows a comparison. This chart is made up of information contained in the record before Judge Cristy, and from the record. Chart one shows a percentage comparison of the race of the population of Maui County and of the Grand Jury list for 1947 for Maui County. This follows the census classification of race. The 1940 population, according to the U. S. Census, was 55,980. The Department of Health, the Bureau of Vital Statistics, shows relatively little change in the population of Maui County. [46] Their estimate as of July 1, 1946, being 55,904. Now, this chart shows that in the population of Maui County persons of Japanese

ancestry are the largest group of citizens, representing 24,183 persons in the population or 43.2 per cent. The records already in the Court show those persons qualified, the racial breakdown is practically the same as the census classification. Yet this black line indicates the proportion in the population. This indicates the representation on the Grand Jury.

Judge Biggs: The red line represents the representation of the Grand Jury?

Mrs. Bouslog: That's right. In other words, there are seven Japanese persons on the Grand Jury, or 14 percent of the list of 50, whereas Japanese represent 43.2 percent of the population of the county. The next largest group is the Filipino group which represents 10,509 persons in Maui County. Their representation on the Grand Jury is zero and has been for the last 30 years. Part Hawaiian—that includes, according to the census classification, Caucasian-Hawaiian and other part Hawaiians—represent 12 percent, represent 14.1 percent of the population. Their representation on the Grand Jury is 24.0 or 12 persons. The Caucasians in Maui County represent 12.5 percent of the population. On the Grand Jury the pure Caucasian, 54 percent of the persons on the Grand Jury are Caucasians. The Hawaiian—that is apart from the [47] part Hawaiians—represent 5.3 percent of the population. They are not represented. Other races, including Koreans, Puerto Ricans, all of whom are in the working class of people, represent 3.4 percent of the population. They are not represented. The

Chinese represent 2.7 of the population and they are 8 percent, 8 percent of them are on the jury. I cannot see how it can be said that the 1947 Grand Jury list represents even a near approximation of the cross-section of Maui County along racial lines as shown by the census classification. But for the purpose of the Territory, as Dr. Reinecke testified before your Honor—and it appears in the hearing before Judge Cristy—there are certain practices and procedures in the Territory in regard to race that do not exactly follow the customary and anthropological lines followed elsewhere.

Table No. 2, or chart No. 2. Chart No. 2 shows the percentage comparison of the nationality of population of Maui County, 1940, and the persons on the Grand Jury panel, according to nationality as it is considered in Hawaii, roughly ranked as to socio-economic status. The haoles, as defined in the record here, represent 2,043 of the population or 3.6 percent. On the Grand Jury they represent 42 percent. The Portuguese represent 8.8 percent of the population. On the jury they represent 12 percent. The Caucasian-Hawaiian represent 7.4 percent of the population, and 20 percent of the jury. Other part Hawaiian, that is, other than Caucasian-[48] Hawaiian, represent 6.8 percent of the population. There are 4 percent on the jury. The Chinese represent 2.7 percent of the population, and they are 4 percent of the jury. The Japanese again represent 43.2 percent, and only 14 percent on the jury. The Koreans—and there are Koreans, your

Honor; I believe one of the Plaintiffs is Korean—represent 1.4 percent and no representation on the jury. The Hawaiians represent 5.3, and no representation on the jury. The Puerto Ricans represent 1.9, no representation. And the Filipino, no representatives.

Chart No. 3 deals with socio-economic classes. The tables in this, the figures in this chart are based upon the number of employed males in the population of Maui County. The figure doesn't seem to appear on the table. It is 17,100 something. In the population we have these two classifications that according to the census would ordinarily be put together, but because there were so many of the very most important firms in the economic structure of Maui County, we broke these classifications into proprietors and managers of important firms and/or large branches. Such persons and population of Maui County represent six-tenths of one percent of the population. On the Grand Jury they represent 24 for 1947. They represent 24 percent of the population. On the proprietors, other proprietors, managers, officials and foremen, exclusive of farm foremen, represent 4.9 percent of the [49] population. Their representation on the jury is 40 percent. In other words, combining the top two, roughly $5\frac{1}{2}$ percent of the population is proprietors, managers and other officials, and have on the jury 64 percent representation. Professional and semi-professional in the population of Maui County, 3.2 percent. There are 8 percent on the

jury. Farm foremen represent 2.5, and they are not represented. There were two farmers, that is, persons who owned their farms or run their own farms. They represent 2.5 percent of the population. There were 4 percent on the jury. Clerical and sales, 6.4 percent of the population, 12 percent on the jury. Craftsmen and operatives in the population, in the employed population, represent 18.1 percent, 6 percent on the jury. Laborers other than farm laborers represent 9.9 percent of the population, 2 percent of the jury. Farm laborers, which represent 47.1 percent of the population, and to which almost all of the Defendants belong except those who go in the operative class, totally unrepresented on the jury. Service workers, who represent 4.7 percent, zero. Occupations not specified—there were two, one person was retired and one person was, I believe, in an institution. Now, I want to call your Honors' attention—

Judge Biggs: May we inquire, Mrs. Bouslog, how much more time you will need to conclude? You used 55 minutes.

Mrs. Bouslog: I think, your Honor, that I can finish up [50] in about ten minutes.

Judge Biggs: About how much?

Mrs. Bouslog: About ten minutes.

Judge Biggs: Suppose you see if you can get through in a little bit less than that. These charts will be received not as exhibits but simply as charts in aid of the Court.

Miss Lewis: Could I ask, Mrs. Bouslog, where

the information on Chart 3 came from? I went through the record just this morning before Judge Cristy and it didn't come out.

Mrs. Bouslog: You will find it in the Defendants' exhibits. You will find every member of the Grand Jury classified on Defendants' Exhibit—it's one of the exhibits in the case.

Miss Lewis: You used an exhibit and not the transcript, is that it?

Judge Biggs: Well, we can clear this question very quickly. These charts appear in the transcript, this transcript, the transcript of the proceedings this morning, and it will be written up. These must be written up as charts one, two and three, offered by the Plaintiff in illustration of what the Plaintiff deemed to be in the record. You, Miss Lewis and Mr. Crockett, can check these at your leisure and you may answer by way of brief if you deem that necessary.

Mrs. Bouslog: Your Honor, I want to call attention to the case of Fay versus New York, and Bove versus New York [51] in this connection. It must be remembered that the blue ribbon panel considered by the Supreme Court in the injury case could not exist in the Territory of Hawaii because we are bound by the Fifth Amendment which requires presentment of indictments by grand juries as selected at common law. I call the Court's attention to the fact that this jury, particularly in relation to the economic class, contains about twice as many proprietors, managers and foremen as the

blue ribbon jury in the Bove case. In the tables set forth in that case, it is in the same sense, the classifications are followed as are followed in that table. And I think it shows there were, for example, proprietors and managers which represented 93 percent—9.3 percent of the population represented 43 percent on the blue ribbon panel, whereas here it is 46 percent. And right down the line you will see that this is more blue ribbon than the blue ribbon jury there, although it is conceded that we could not operate with the blue ribbon system in the Territory of Hawaii.

As your Honors are all aware, the Supreme Court of the United States has also specifically condemned the practice of selective members of the jury from the personal acquaintances of the jury commissioners. That was in *Smith versus Texas*, 311 U. S. 128. And the reason the Court condemned it was because it tends to limit the cross-section that would otherwise be achieved. [52]

The record shows that there are approximately seven thousand male registered voters in Maui County. It is inconceivable that all the jury commissioners know all of those seven thousand registered voters. A check of the transcript—and I will merely summarize this table—shows that Jury Commissioner Pombo knew personally all but ten of the fifty persons on the jury list. Chatterton, Jury Commissioner Chatterton knew all but nine of the persons on the jury list. Judge Wirtz knew at least 60 percent personally of the persons who were on the jury list. So that it becomes apparent that the

jury is hand-picked in the sense that they are personal acquaintances of the members of the jury list. Interestingly enough, the record shows that the individuals that the Jury Commissioners did not know were those who came in the operative craftsmen and operatives class. All the business people they know, but they did not know the craftsmen, the operatives or the semi-professional workers who occupied lower positions on plantations.

I think, your Honors, that I will not have time to summarize the standards used by each one of the Jury Commissioners as shown by the transcript.

Judge Biggs: You may cover it in your brief. You will cover it in your brief.

Mrs. Bouslog: Perhaps your Honor doubts the sincerity of the Plaintiffs' fears that their rights will continued to [53] be denied, that these juries will indict, or that they will be convicted by these juries of the felony of unlawful assembly, but the record in Hawaii, as shown by the records in the Supreme Court, shows that this discrimination against labor, the harsh meting of penalties, is not something that was evolved yesterday or by these Defendants here, but that it has continued for a long period of time. At Hanapepe Bay in Kauai in 1924, sixteen strikers were shot. I believe six strikers were given, served four years prison terms. During the Maui Filipino strike, after the strike leaders—I believe Mr. Crockett referred to that case—the strike leaders received a 5-year sentence. Even a newspaper editor who came to his defense was jailed for criminal libel for attacking the bad

faith of the companies in a quite remarkable decision in which the Supreme Court held that the burden of proving his innocence was on the defendant in a criminal libel case. And in the Hilo massacre of 1938, where 50 unarmed men, women and children who weren't even on strike, were shot and bayoneted by deputised police officers, not one single officer, not one single person was ever charged as a result of that shocking incident. As a matter of fact, the persons injured were not even able to collect damages in civil suits in the Territorial Courts.

Plaintiffs don't contend before this Court, and they have contended in no Court of the Territory, that pickets [54] are immune, or persons in labor disputes are immune from the processes of the criminal law. But what we are attacking is the whole basic feeling that picketing and strike activity is a conspiracy. If an individual is guilty of assault and battery, he should be charged with assault and battery. If he is guilty of the breach of peace or of profane language, he should be so charged. But the theory which makes every picket line a conspiracy, every group of working people an unlawful assembly because they have a mutual purpose, that is where the deprivation, the serious threat of the rights of the Plaintiffs, the serious threat against the rights of the Plaintiffs exists, because of that theory of conspiracy behind picket line activity. I believe that the working people, the classes who are unrepresented on the jury, are entitled now to the protection of the Constitution.

The Territorial officials have had since 1900 to work out a method of selecting representative juries, but this jury represents not only the 1947 jury but the juries like it through the years back. All of the Plaintiffs, your Honor, belong to the classes and to the races who are unrepresented on the jury, both economically and racially.

Judge Biggs: The Court will recess for five minutes.

(A short recess was taken at 11:55 a.m.)

After Recess

Mr. Crockett: If the Court please, the Defendants would like to divide the time between myself and Miss Lewis. And I shall endeavor to establish a new record for brevity. The drama has been unfolded before the Court during these few days of trial, and apparently, as the Prosecuting Officer of the County of Maui, I seem to be the villain in the case. I assure the Court that I at all times, and I think the other prosecuting officers, have certainly endeavored to see that Constitutional rights not only of the laboring men but of all people, those who are on strike, those who do not care to strike, and in every class, have been protected as best as I could see that they were protected.

And in this particular case, if the Court please, it is not a question of trying to break any strike or to bring about any pressure against it. It is simply trying to enforce the laws as they are

written in the books of the Territory. And those laws, if they are improper, there is due process by which they can be reviewed and taken off the books.

The issue in the case, if the Court please, can be summed up into two. First of all, whether the Grand Jury is illegally constituted, and second, as to whether or not the several incidents with which these Defendants have been charged constitute actual criminal matters which should be left to the discretion of the criminal courts of the Territory.

In regard to the constitution of the Grand Jury, we submit, if the Court please, first of all that the burden is upon the Plaintiff to show that this Grand Jury is illegally constituted, to show not merely that there is a disproportion in the numbers, but to show that that has been a purposeful discrimination. That is the rule which has been established by the Fay case. And without reading this case, if the Court please, I submit that the facts in this case show no more than was shown in the Fay case, and where the Supreme Court said on page 291 of that case,

“At most, the proof shows lack of proportional representation and there is an utter deficiency of proof that this was the result of a purpose to discriminate against this group as such.”

The three charts which have been presented to the Court this morning are absolutely immaterial and have no bearing whatever upon the issues in the case for the reason that they are based entirely

upon the population of the County of Maui and not upon the citizenship. Right at the very outset they show that they are absolutely worthless, because it is a well-known fact that, as shown by the records of this case, out of the ten thousand Filipinos which Counsel claims that are on the Island of Maui only 187 of them are qualified voters of the County of Maui. And yet the chart is based upon the population and not upon the percentage of voters. [57] And every comparison there is a comparison of the number of persons on the Grand Jury with the entire population, while the Supreme Court in all of these cases is concerned not with the percentages of population but percentages of persons who are qualified as voters, qualified as jurors. And the first qualification is that they be citizens of this country. We submit, if the Court please, that there is no showing that any large numbers of the Filipinos are qualified to vote. Counsel said, qualified to serve as jurors. Counsel stated in her argument that we had conceded that that was true, that there were qualified Filipinos. And we submit, if the Court please, I don't recall any time except on my testimony from the witness stand, and I said that in 1948, after some Filipinos had been naturalized under the new laws of the United States, that a few of the leading Filipinos were found to be qualified. But that, of course, could not have been reflected upon the jury which was selected in 1946 to serve for the year 1947.

The Plaintiffs not only failed to show any pur-

poseful discrimination but they have failed to show that there has been any systematic discrimination, and they have further failed to show that the Filipinos are entitled to representation as a national group. Why should the Filipinos be entitled to separate representation from any other Oriental group? It is as much to say because there are large numbers [58] of Germans or Scandinavians in some particular section of the country that they must each be represented in proportion to the number within that community. Unless that would probably be true if there was a definite and purposeful discrimination, a systematic discrimination, as the Supreme Court has continuously pointed out. That, we submit, has not been shown in this particular case.

It is for this Court to determine whether or not from all of the facts before it a truly representative Grand Jury has been selected. And I submit, if the Court please, that the record shows that based upon the testimony of Judge Wirtz, who was disqualified because he actively engaged in the selection of this jury, that the Jury Commissioners felt that after they had gone over the list, made out this list, that they had picked out a list which was representative of that community. And I'd like to simply refer the Court to the testimony given by Judge Wirtz, which is found on page 235, where he asked, where he was asked a question: "Is the jury list a true cross-section of the community?" And he stated, "I feel that it is." And that was a question which

was propounded to him by the attorney for the defendant on the trial of that issue.

Now, coming to the second issue, if the Court please, of whether or not the several incidents present a criminal matter which should be tried entirely by the criminal courts [59] of the Territory, Counsel has said she has exhausted her remedy and relief in the criminal courts when a portion of these Defendants, if the Court please, have not even been brought before the Grand Jury. The Grand Jury has not even considered their cases. And, although she has pointed out and brought before this Court some individuals who perhaps were not properly identified or were not shown definitely to have had a part in those incidents, nevertheless perhaps that would be screened out by the Grand Jury. So that we submit they have not exhausted their remedy, in the criminal courts of the Territory.

We contend that the several incidents do present criminal matters, and these criminal matters should be left for the determination of the criminal courts of the Territory.

The Paia incident shows that there was violence. The testimony is clear, that prior to October 16th the police made no interference with the picketing activity, that parades were staged, that picket lines were established, that even homes of individual workers were picketed. And yet there was no offense committed. The police made absolutely no action, took no action, and made no charges against any of the pickets. On the morning of October 15th

an appeal was made to the police by persons who did not adopt the same views towards the strike as the strikers did. They stated to the police that they wished to go to work, and they told [60] the police why they wanted to go to work, that their families were suffering from lack of food and that the union officials were unable to carry out the promises that they made in regard to the supplying of food, and they felt it was necessary for them to resume their work and their activity. And as a result of that, they appealed to the police to please escort them across those lines in order to get back to their work.

The police allowed one of the leaders of the union to come and talk to them, and as a result the men went home. He said, "But I am coming back tomorrow morning." And what happened when he arrived tomorrow morning? That was not an incident that the police stirred up. But here was a man and four others who were trying to get back to work. They ganged up and refused to allow him to go across. The police didn't use any blackjacks. They didn't use any guns or any knives or anything like that. Captain Long stated that he walked to the road, on the other side of the road to where one who was standing and said, "Open up the lines, please, so that these men can go through." And what happened? He said that immediately the whole crowd ganged together in a mass and pushed, and ultimately pushed the officers back. Now, that was a criminal incident, if the Court please.

Whether they were charged with riot or unlawful assembly or loitering or any other act, if the Court please, it is a matter for the criminal courts of the Territory to pass upon. It is a matter [61] to be submitted to our Grand Jury. It is a matter for the jury to pass as to whether or not the Prosecution perhaps have requested a little bit too much. That is for the criminal courts to pass upon. And we submit, if the Court please, that this Court should allow the criminal courts to pursue their ordinary process.

Taking the second incident, the incident at Lanai, on the wharves, there was not even a case of trying to cross picket lines. Certain men were at work trying to preserve the fruit which had already been picked and which was spoiling on the wharves. And these men, the men who have been charged in this case, gathered there in a group and at a pre-arranged signal rushed across these bins and didn't only do as Counsel would have the Court believe, spill a few pineapples on the docks, but they jumped and climbed on top of the bins and beat up one of the men who was there. That testimony is set out in detail in the testimony which was taken in the Aglian case by Harrington, Jerome Francis Harrington, who testified that he was the man up on top there, and a half a dozen or more got up on top of him and knocked him down, and with his face down on the pineapples, they tried to beat him up, and beat him about the body.

Fernandez was forced to jump off the crane and

forced into the water. Whether he was pushed off or whether he jumped off, it makes no difference so far as this Court is [62] concerned. It was particularly mentioned that the throwing of pineapples constituted a rather serious phase of the case. I think it is still part of the laws, not perhaps of law but the tradition of the United States, that a man who has glasses on, you usually give him a chance to take off the glasses before you sock him on the jaw. And if a man falls down on the ground, you give him a chance to get up before you beat him. And I submit, if the Court please, that a man swimming in the waters of a bay like Kaumalapau is in a much more helpless position to defend and protect himself than a man who has fallen into the ground, and he is in no position to dodge pineapples that are thrown at him. And if one of those pineapples would have struck him on the head and he had sunk down to the bottom of that bay, we'd probably be trying some of these persons for murder instead of the charge with which they are charged.

The Makekau case is practically a parallel case. There was no picket line there established. But on the day before, by the testimony of Makekau himself, these strikers had agreed that the next morning they are going after these particular persons. And they arrived there and they beat them up. That constituted a criminal incident, not peaceful picketing. It was purely a crime, and these persons, if the Court please, we submit have all been charged

before the Courts of the Territory of Hawaii not as strikers, not because the police are [63] trying to break up the strike, but simply, if the Court please, because they have violated the laws of the Territory of Hawaii. And we feel that those matters should be investigated by the Grand Jury. It should be submitted to the Court for decision. And we submit, if the Court please, that there isn't a single bit of evidence here that they won't get just as fair a trial in those courts as they will get in any court of the United States.

Counsel claims that by the course of these incidents, the course that the Prosecution has pursued in many years, that there is discrimination; that the only time the unlawful assembly law has been brought into play has been in cases involving labor. The Court is well aware of the fact that it is not often that large masses of persons gather together and that there is tumult and violence in the ordinary gathering. And they have failed to show that there have been any other incidents of similar nature occurring other than in labor trouble. And we submit, if the Court please, that that is not sufficient to show discrimination. They must show something more definite than just mere conclusion that because the occasion has occurred for bringing this type of case against the strikers—they must show that there were criminal and other incidents that occurred which are similar and that a similar charge should have been brought against them. [64]

As for the claim of irreparable injury, there is

only the conclusion of Mr. Hall and Kawano and Rania that the charges brought against these persons will produce the results which they claim. And that is offset by their own testimony that even after the charge of unlawful assembly was brought to their attention, by being made in the Paia incident, yet 90 percent or more voted in favor of the second strike.

So we submit, if the Court please, that the facts which have been produced in this Court show conclusively that there were violations of the laws of the Territory of Hawaii, and that there has been no discrimination against Filipinos, as such, either in calling them to serve upon the Grand Jury or in the prosecution of these cases by making charges of riot and unlawful assembly, and that this Court should, upon the evidence adduced, permit the Prosecution to go ahead in the prosecution of these cases through the ordinary processes of law.

Judge Biggs: Miss Lewis?

Miss Lewis: If the Court please, I am not going to argue about the jurisdictional amount. Some attention was paid to it by Mrs. Bouslog. I feel the Court is going to review that ruling in the Mo-Hock case about the application of paragraph 14, and we at one time went into the whole legislative history and will be glad to append a statement [65] in our briefs because, frankly, we were very much surprised at that ruling and we feel that people of this Territory should have all the civil rights that any other people have. But if jurisdictional

amount has to be established in this case, I submit it has not been established. However, it is not a matter I want to take up at this time.

Now, I will endeavor, without repeating what Mr. Crockett said, to lay out the bones of this case and to see where we are. And in doing that I would first like to take up those Plaintiffs who are Defendants in the criminal courts of the Territory. Now, here we contended that equity did not intervene usually and that the statute, Section 265 of the Judicial Code, applies. And the contention was that this was so exceptional, such a peculiar case of clear and imminent irreparable injury, that the Court should not follow the usual rules. Now, what do we have? We have no showing that these people are in danger of losing their employment. There are other instances shown that Pioneer Mill Company, at the time certain charges were brought, whether it was because they were charged or because that incident involved a beating of supervisors is not shown, but certain people were dropped by the Company. And yet Mr. Yamauchi, when he appeared on the stand, was still employed by that Company. So we must assume he was reinstated. However, what do we have in our own case? Because, after all, we are trying a specific case. It is stipulated that every [66] one of these people when they brought these actions was employed by these same companies, namely, Maui Agricultural Company in one instance and Hawaiian Pine in the other. Now, they had already been charged in the

criminal courts some time before they brought these actions. So that is strictly in the red herring field, I submit, your Honors. There is no showing of an irreparable injury in that respect.

Now, we were also told that the first amendment cases stood on a different pedestal. Those rights of free speech and free press and peaceable assembly, which undoubtedly are dearest to the hearts of all Americans, should be treated in a different category, we were told. We felt that the rules of procedure still applied and we argued to your Honors that that was true, that we could not operate a system of Territorial Courts, administering the criminal laws, unless the usual rules apply. Now, we find that we haven't got any first amendment cases, your Honor.

We have proof that there were three definite incidents. In the Paia incident, the peaceful picketing which the Plaintiffs' film showed to have gone on day to day without any intervention or obstruction by the police had stopped when this massing occurred for the purpose of throwing the scabs back so that they could not enter.

In the Makekau incident there never was any peaceful [67] picketing as far as the record shows. They just went up there for an express purpose of violence. And at the wharf the record shows there was picketing for a short time and then they all sat down to wait for the barge to come in, the tug and the barge, obviously so that they could put on what afterwards followed. And in any event, in none

of these cases has any Defendant in this case, any of the prosecuting officers or the police, shown any confusion at all as to where the incidents began which involved violence and the peaceful picketing stopped.

So why these first amendment cases? What right, of free speech or free press or peaceable assembly, are these defendants trying to protect? What right are they trying to protect in these particular cases? We have to get down to facts. The Plaintiff may say, but that is your side of the case, we don't concede; our side of the Paia incident is that they didn't mass to throw those scabs back, that the officers called them. But, your Honor, this is for a jury to decide what happened there. Surely this Court is not going to receive cases of this kind for the purpose of pre-judging in equity without a jury as to the disputed questions of fact. And Counsel herself said that the guilt was not in issue here.

Now, I think Mr. Crockett has covered the matter of the claim that certain persons were not present at all. I do not [68] see how that goes to the question of the Constitutionality of the statute. Where there is an indictment, the law is well settled, that it is not to record on collateral facts, to go behind the indictment, one of the cases being the case of Theodore Roosevelt Potts which I think one member of the Court has mentioned, and another I have cited. We will take that up in our briefs.

Now, in some instances, because of the Restraining Order that was issued, we now proceed to the

indictment, and I submit that those cases are really premature in any event. We do not know what the Grand Jury would do. But we do know, and it is shown in the record, that these people who claim they were not present did not choose to testify at the District Magistrate's hearing. Some of them didn't know what they had told the police. Some of them actually have been dropped. It is absolutely untrue that the Grand Jury ever indicted a dead person, and the record of the indictment referred to shows that the foreman of the Grand Jury had struck the name out. So that this is all a side issue. It is an attempt to confuse this case, to try to get this Court to take up issues of individual guilt which are not before the Court but which will be taken care of in due course in the criminal courts of the Territory. I could review all of those cases man by man, but I hardly think that I could take the Court's time to do that. So I do not see any reason [69] for diverting from the usual rule in these cases.

But what is the claim of un-Constitutionality in any event? After all, that was the original proposition. Now, I will get into the charge of the discrimination that has come into the case later.

Originally we were charged with using un-Constitutional statutes. Now, all that Mrs. Bouslog has ever argued about, the unlawful assembly and riot statute, was that it resembled an old statute of George I, and we are supposed to believe that there was some British influence here in the old days

and that the statute has been slumbering ever since and nobody, until Mrs. Bouslog brought it up, had ever considered that statute in modern light. Well, that is simply not true, your Honors. In the first place, the statute of George I was a statute dispersing assemblies on the mere belief of an officer that they had an unlawful purpose not outwardly manifested. And yet in the questioning Mrs. Bouslog herself established that there was no order of dispersal in any of these instances. So why have we been going up and down arguing about the rights of others and the orders of dispersal? The only question raised as to the statute—I can see where Mrs. Bouslog, if there were an order of dispersal, would like to argue that the peaceful picketing, which might have been resumed afterwards, was thwarted, and she would thereby attack the discretion used by the officers, although our statute [70] affords protection against such matters. But in any event, it simply isn't in the case. We don't have an order of dispersal case. We have a question for a jury as to whether the assembly had proceeded to that point at which there was terror to the populace, and that is a question that this Court should not take away from the jury.

Then as to the conspiracy statute, Mrs. Bouslog did not take it up again but in her previous argument she was concerned only as to one part of one section following a semicolon. We had preceding that a statute, as the Court will recall, that related to conspiracy to commit an offense, namely, act of

violence. And I submit that in the case of the Paia incident, where that statute is invoked and the only instance in which it appears in the record that the conspiracy statute is involved, is that the evidence gives good justification for or probable cause that a jury might find a conspiracy to commit acts of violence because Mr. Kaholokula at the time told the boys to remember what he told them last night. And all of their actions showed a preconceived intent. In fact, the previous conversations show that.

Then we have also a question of conspiracy to instigate others to an offense, namely, acts of violence which fall in the same category.

Now, is this an instance so exceptional that the Court should violate the usual rule of leaving the matter to the [71] criminal courts because there may be some third part of the statute which relates to something else, namely, the malicious concerting together to do what is obviously and directly wrongfully injurious to another? I submit that it is not. In any event, they ought to stand trial for conspiracy, and whether the conspiracy which the Court should leave to the jury to consider should include merely conspiracy to commit acts of violence there at Paia or whether it should include something more——

Judge Biggs: Just a moment. Proceed please, Miss Lewis.

Miss Lewis: ——the parts of the statute that have not even been attacked should be presented in

a criminal court of the Territory anyway. And whether another part should or should not also be left to the jury to consider is a matter which that court can take care of in that case in connection either with a charge to the jury or the pleas to the indictment which have not even been heard. And that brings us squarely within the Petrillo case. But this being an equity case, I submit to the Court that it is in any event not such an exceptional matter that that one clause is something that has not been adjudicated specifically in that particular matter. It is not so exceptional or rare as to take the whole case away from the Court of the Territory or the jury.

Of course, some reference has been made to the antiquity [72] of these statutes, and the Court itself remarked that it was unusual to give examples but I have shown by the documents that have been submitted this morning, and I have a memorandum which I might leave with the Court—it refers to those documents—both the conspiracy and riot laws which were drafted by William Lee, a Harvard Law man of considerable attainment and the first Chief Justice of the Territory. In any event, they were transmitted to Congress by a commission which had gone through every one of our laws and had marked some for repeal, such as the statute on seditious offenses which was repealed by Congress, and Congress continued the rest of them in effect including this one but said that they must be not inconsistent with the Constitution or laws of the

United States. I am not representing that Congress endeavored to take the Constitution away from anyone in this Territory. We have in the martial law case presented just the opposite, as Judge Metzger will recall. But the point is that those persons who reviewed those laws did not see any occasion that they should be repealed, although they did see occasion to repeal certain other statutes such as the seditious offenses and that they did this work with considerable thoroughness.

Now, I would like to go on in the remaining time from the cases of those Plaintiffs who are individually Defendants in the criminal courts of the Territory to the other aspects of the case where Counsel for the Plaintiff seeks to give [73] this the aspect of a continuous scheme of action by the Defendant Prosecuting Officers reaching into the future, which should occasion the intervention of this Court. Now, what do we have? We have the testimony of Jack Hall that the union wants to carry on general picketing. And then he said, "Maybe some outsiders would stir up trouble." Well, that is pure speculation, your Honor. I again have to refer to the case of Watson versus Buck because it is so well-known and has been cited in a very recent case, the United Public Workers case, and I would like to hold that before the Court as a yardstick as we go along, because the Court said in that case,

"A general statement that an officer stands ready to perform his duty falls far short of such a threat

as would warrant the intervention of equity. And this is especially true where there is a complete absence of any showing of a definite and expressed intent to enforce particular clauses of a broad, comprehensive and multiprovisioned statute.”

And then they go on to sum up the thought in this way:

“The imminence and immediacy of proposed enforcement, the nature of the threats actually made, and the exceptional and irreparable injury which complainants would sustain if those threats were carried out are among the vital allegations which must be shown to [74] exist before restraint of criminal proceedings is justified.”

So with that yardstick I submit, if the Court please, that there is no proof whatsoever that any one of the Defendants has ever threatened to interfere with general picketing. And the Court has seen for itself that general picketing was carried on day after day without any such interferences.

As to this fictitious case that someone might stir up trouble, of course that is just a case that would have to be judged as to who is responsible, who was guilty for any trouble that occurred there. It is a pure speculation, it is not in the nature of any threat, I submit, from Mr. Hall's testimony to interfere with rights of these parties.

Then Mr. Rania and Mr. Kawano used mere conclusions that the members were in fear. We were not told what they were visualizing that they would do, and since we are not told that, we do not know

what the Defendants' prosecuting officers would do about it. We have a complete absence of showing of threats to interfere with these Plaintiffs because they have not chosen to tell this Court precisely what it is they want to do except that Mr. Hall said they wanted to carry on general picketing.

Mr. Kaholokula was talking about one particular incident and it did appear from his testimony that there was a feeling that mass violence could be used to prevent persons from [75] going to work who wanted to quit the strike, because he said, "We were 400 there and they were 5; how could they bust through?"

But in general we are left where we were before we went to trial. We are left to speculate as to precisely what the Plaintiffs want to do, and so we do not know what the Defendants would do in that situation. Now, there are only two alternatives, since we are still speculating as to what they want to do: one is that they just want to picket around the entrances, moving up and down in the usual form of pickets, and if so, we won't have any trouble. It is very obvious that the Defendants have no intention of interfering with them. The other possibility is that they do intend to go out and repeat what has happened before, and that they take the position that they will use mass violence whenever they find anyone working, be he union man or supervisor or someone who is not in the union. That is the choice that we are left with, because we are not told and we have to speculate on both possibilities.

Now, I have covered the first one. There won't be any trouble at all. The Defendants will not interfere with any peaceful picketing. As to the second, if the Court please, there never was such a case brought as that. Mrs. Bouslog stands here and says to this Court, If we have trouble, all right, we'll stand trial for certain minor charges, but this statute is too much. That is the way I understand the case [76] that is presented in that phase of the matter.

Now, what is the right that they are seeking to vindicate here, your Honor, in that status of the case? I feel that we just have to open up and lay out the bones of this thing. Equity does not take a case merely to test the Constitutionality of the statute, the criminal statute. Now, that is the first principle, as the Court told me on the first day, ought to assume that the Court knew the first principle. All right. What are the exceptions? The exceptions are interferences with some property right so that a person cannot carry on and enjoy his property rights, or, as the later cases have indicated, a personal right such as free speech or peaceable assemblage. And I would like the Court to know that we are not arguing about the old rule of property rights being extended to personal rights because obviously personal rights are as great or greater than property rights. But we still have to find out what those rights are that they are trying to vindicate here.

Now, what is it again that they want to do that

they have a right to do? And the intention to go out and use violence is not a right which can be asserted because there is no such right. So we are completely lacking in the impact between something that the plaintiff in equity has a right to do and that the statute interferes with, because they have no such right if we assume that feature of the case.

Now, even Professor Borchard, who is the prime advocate of adjudicating almost everything in its hypothetical state that is possible—and the Supreme Court has not followed him—but even Professor Borchard has made a distinction such as the one I am trying to make here, because he said in his article in 52 Yale Law Journal, 445 at page 478, which the Plaintiffs have cited,

“In these cases injunction is common, provided irreparable injury is shown, since these offenses are of a kind that are *malum prohibitum*, where no public purpose is impaired by adjudicating the construction of the statute before the offense is committed and without compelling the commission of an offense as a condition of adjudication. These considerations are absent in the case of crimes that are *mala in se*. If a person is about to commit murder, robbery, or any other felony, no one would suggest that he obtain an injunction or a declaration before commission of the offense to find out what the statute means.”

I don't see why the Constitutionality would be any different. In other words, the Court is being asked on that assumption, which I necessarily must

make because we are not told what the Plaintiffs have done, but on that assumption the Court is being asked to give them greater assurances of impunity and immunity from prosecution for their acts of violence. [78] And the Court would actually aid them in carrying on acts of violence with more comfort in the future. And I again submit to the Court that there never was such a case entertained in a court of equity.

In *Hague versus C.I.O.*, as an example of complete contrast, what do we have? We have allegations in the bill, as the Supreme Court recited, that all the activity in which the plaintiffs seek to engage in Jersey City were and are to be performed peacefully, without intimidation, fraud, violence, or other unlawful matters. And then we come to the findings of the Court, with which this Court is certainly familiar, and the Court found that the persons affected, who brought that suit, were acting in an orderly and peaceful manner. The Court found there was no competent proof that the proposed speakers whom the plaintiffs said they wanted to use had ever spoken at an assembly where a breach of the peace occurred, or where any utterances were made which violated the canons of proper discussion or gave occasion for disorder. So that was the case of the plaintiff in *Hague versus the C.I.O.* It is not the case of the Plaintiff here, apparently.

If the Court would need a rule or a maxim on which to fasten the matter, I feel it is really a

matter of common sense. I would submit the clean hands doctrine which I mentioned earlier, and now we have facts by which to judge the application of that maxim: he who comes into equity [79] must come with clean hands. And I cited to the Court earlier the case of *Buck versus Gallagher*, 36 Federal Supplement 405, in which a 3-judge court, with the opinion written by Circuit Court Judge Haney of this Ninth Circuit, held that where plaintiffs were engaged in a monopoly which was against the anti-trust law of the United States they could not test the Constitutionality of a Washington statute which was directed to certain particulars of their actions. They were out of court because in any event they were in violation of the law. And we put this case in the same category.

As to the claim that has been made of indefiniteness in the statute, if the Court please, that is a claim that is not tested in equity. Mrs. Bouslog cited the *Thornhill* case. That was a case of an appeal from a conviction. And the Court points out specifically that the lower court had not narrowed the statute to something which was clear and definite but had applied it *holus-bolus*. Incidentally, that was a loitering law. They had applied it to all acts including those that were lawful. And so when the matter came up for review of the conviction, of course there was an element of illegality that had crept into the record.

Now, this matter is very clearly explained in the dissent in the *Musser* case. It is a very clear treat-

ment of the earlier Thornhill case, and some other cases where the court explains what the difficulty is in those cases, that the [80] criminal court that tries the case has not saved the statute from its indefiniteness. But what is the situation in a court of equity on the contrary? How could a person come into a court of equity and say, "I fear the application of this statute because it is so indefinite that I don't know whether it applies to me?" He necessarily in a court of equity does know or does not know whether it will apply to him. That is not a matter which equity can judge in advance but it is a matter which comes before an appellate court on review of a conviction, why it is necessary at that time to hold up in the one hand the record of what the proof was and what was submitted to the jury to decide, and in the other hand the statute. You see whether it did give sufficient warning to the defendants that they would be tried on those facts. That is an instance that cannot be prejudged in a court of equity.

Now we come to the question of discrimination which Mr. Crockett has already given the Court considerable—I believe I have ten minutes.

Judge Biggs: Yes, if you need that much.

Miss Lewis: Yes. We have submitted before that this was not alleged but we tried to meet it anyway. I feel we had no warning of it, but let's proceed from there on. I cite to the Court a decision by Judge Yankwich, that the defendants who were guilty were not to be let off because [81]

other persons were not prosecuted, even if that were deliberate. But coming further down the line, there is no proof here of a deliberate failure to prosecute others because there is no showing that other facts occurred which required the invocation of the statute and that they were deliberately ignored. Now we get into a little change in the thought at this point. Sometimes I think Counsel for the Plaintiff is talking about that type of thing that is where over and over again, as an example, Chinese gambling dens were raided and nobody else was, and it was proved that there were other gambling dens. It was a simple fact. And here, of course, we have a very complex state of facts involved in the type of statute that we have. It is obviously hardly susceptible of proof. None has been offered. But in any event, at other times we seem to be getting over into another type of thought which is also not alleged. Apparently there is some attempt to persuade the Court that the Defendants in this case, the Prosecuting Officers, are not proceeding in good faith, that they do not have the facts to back up these charges. Well, we have been in here and we submit we have shown probable cause for each and every charge sufficient that a jury should decide the conflicts in the testimony. Hence, why go into questions of bad faith? Well, the Plaintiffs will say, maybe in those cases it is one thing, but how do we know what you will do in the future? Again, it is purely speculative. [82] And how do they try to show that? They try to

bring in a number of incidents from Honolulu, if the Court please, where honestly it was difficult for us to decide whether to go all the way down the line and meet all of this or to simply submit to the Court that in any event it was not peaceful picketing. That we did prove. We went that far. But we could not see how we could take the Court's time to go all the way into those incidents. We showed in both cases that they tried to bring in from Honolulu that they were not peaceful.

Now, what are we going to conclude on Maui County as to how it is in Honolulu? I feel that that should be struck out. The Attorney General has supervision over prosecuting officers, but there was no offer to show that the Attorney General either directed the charges to be made or that he directed them to be Nolle prossed here in Honolulu. And the Plaintiff could have shown that. They could have called the District Court Prosecutor or the officials of the Public Prosecutor's office of Honolulu City and County who handled the cases. But they did not choose to do so. In any event, it becomes further and further from the point because the Defendant, Walter D. Ackerman, Jr., was not Attorney General then. He took office some time later, October 14, 1947.

So I say, that when we get right down to the essentials we have an attempt to show discrimination without showing of other cases that should have been prosecuted and were similar [83] and consistently failed to be prosecuted, and I think

that would have to be in Maui County. And we have some claim of bad faith, which is met because we have shown what the proof is and what occurred. So that I think that red herring should be disregarded as well.

Judge Biggs: Miss Lewis, how much time do you need to conclude?

Miss Lewis: Well, I think that I have only one more thing to say, and that is, as to the Grand Jury. If the Court please, I think the case that Judge Hall decided in 70 Federal Supplement, concerning a challenge to a Federal jury is very much in point. These Plaintiffs come in and talk about race classifications and then bring out themselves that they have crossed over those racial classifications whenever a person had a good job. So that when we get all through with it, they have shown themselves that in this Territory it isn't so much a matter of race as what a man can do. But they talk about economic status, and that is really what they are talking about and not racial discrimination. I think the record shows that very clearly. And then they set up a number of classifications which are hand-tailored because of this particular case. Now, how can the Jury Commissioners know when they start to set up a jury what the cases are? They have bunched into one group 33 people, all people who own any business, all people who are managers of any business except [84] farm managers—you see, the exception is because this is a case of agricultural labor—all officials, even the

County officials who are purely of an independent category, just working for the Government, all bunched into one group in order to draw a point that there were no farm laborers. There were laborers; they were daily wage earners on the jury. And they admitted that they wanted to draw a point about farm laborers. Well, suppose it was a banker who was on trial? Of course, he won't stand for the type of grouping of the thing we have done. It presents itself as the type of thing which would make the work of any Jury Commissioners impossible to accomplish. When you get all through with the whole matter you come out with a simple fact that is pointed out in the Fay case, that insofar as economic status may be material, it might be, because their claim is that they did all this in a labor dispute. And so a court that would be thoroughly impartial might like to know who on the grand jury list was strictly in the managerial class in the sense of top man in the company who handles such matters, and who were in the union class. But when we came in and showed that there were six members of the I.L.W.U. in that Grand Jury list, they started right away to pull that apart and show that three of them were clerical. And, if the Court please, one of those is even an official of that local, or was an official of that local. I don't know the present status. [85]

So that we have a very picayunish attitude in the making of these classifications which have been hand-tailored to try to show something to the Court

for which no Jury Commissioner would ever constitute a jury if it were to try to visualize all the cases that were going to come up and all the arguments that could be made.

Judge Biggs: Will you (to the Clerk) pass down to Mrs. Bouslog and Mr. Griffith this, please. This is merely Section 5 of 50 Stat. which we discussed before in respect to Section 266. I couldn't understand your argument, Mrs. Bouslog. I want you to give it to me again briefly on that. Remain seated, please. Just discuss this.

Mrs. Bouslog: I wish I had before me, your Honor, the whole part of the statute. My feeling was that this definition attempted to say that they wanted every court whose jurisdiction Congress conferred, defined or limited by Congress included, so that they could not interfere with the enforcement of Federal statutes.

Judge Biggs: Yes. You stated that you thought the phrase "Court of Record"—you see the second line?

Mrs. Bouslog: Yes, your Honor. I think that refers only to the Circuit and Supreme Court, and that this Court of Hawaii and that this Court is included in the term "District Court" because of the definition.

Judge Biggs: All right. Now, that concludes the [86] arguments. There is one further matter. We want Counsel to include in their briefs all reported decisions in the Territorial Courts or in this Court respecting picketing or contempt proceedings aris-

ing under alleged violations or actual violations of picketing. They need not be commented on. They may simply be included in a table attached to the briefs, or one of them, and Counsel may collaborate to make sure that they have them all. And if it is in one brief, it is enough.

Mr. Symonds: There is the question of the cost of the preparation of the record. I spoke to Judge Metzger about it several days ago. I wonder if we could take it up at this time?

Judge Biggs: What is that? I am not familiar with that.

Judge Metzger: I haven't been able to get the concurrence of the Administrator as to anything concerning that yet.

Judge Biggs: You mean the Administrative Office, Mr. Chandler?

Judge Metzger: Yes.

Judge Biggs: Well, just so that Judge Harris and I may be briefly informed on it, what is it?

Mr. Symonds: Well, your Honor, I was concerned with the question and I spoke to Miss Lewis about it, as to who was going to pay for the original transcript, original record. We realize that we will have to pay for our own copy. [87]

Judge Biggs: Yes.

Mr. Symonds: But, of course, the copies are much cheaper than the original record, and we are concerned about whether or not——

Judge Biggs: Well, I am afraid we cannot inform you with respect to that until we have some

further dealings with the Administrative Office respecting it.

Judge Metzger: As I understood the offer that you made, I suppose in concurrence with Miss Lewis of the Attorney General's Office, that we would each pay for one-third of the cost of three copies for the Court and one copy to each of you.

Mr. Symonds: That was the proposal I suggested to you.

Judge Metzger: All right. I submitted that to the Director of the Administrative Office of the Courts with my recommendation that he approve that. And as yet, I haven't had any reply. I expect it by Monday.

Mr. Symonds: All right.

Judge Biggs: That brings us to the matter of Civil No. 833 and No. 834, Reinecke versus Loper and others. The Court has prepared two orders and an opinion. Summing up briefly, the reasons for our conclusions are set forth at some length in a Per curiam opinion which will be filed with the orders. We deny those portions of the motion requesting the striking of part of the complaint. We deny any of those portions of [88] the motion praying for summary judgment in favor of the Defendants. We grant those portions of the motion praying that the action be dismissed, and we dismiss the actions. The basis of our decision being in substance that the administrative remedy has not been exhausted. We offer these to the Clerk for filing. Copies may be made available to Counsel

and whoever else desires them. The Court will stand adjourned.

(The Court adjourned at 1:07 o'clock, p.m.)

I, Albert Grain, Official Court Reporter, U. S. District Court, Honolulu, T. H., do hereby certify as follows: that the foregoing is a true and correct transcript of proceedings in Civil Case Nos. 828, 836, 833 and 834, held in the above-named court on May 1, 1948, before Judges Biggs, Harris and Metzger.

May 10, 1948.

/s/ ALBERT GRAIN.

STIPULATION

It Is Hereby Stipulated by and between Walter D. Ackerman, Jr., Attorney General of Hawaii, as an appellant in Civil Nos. 828 and 836 and as attorney for the appellant Jean Lane in Civil No. 828, and Bouslog and Symonds, attorneys for the appellees, that the annexed pages, except for the omission of illustrative diagramming, are copies of the charts used by plaintiff-appellees in their argument of May 1, 1948, and which the Court directed be written up as part of the transcript of the proceedings of said day (Tr. May 1, 1948, p. 51) and it is further stipulated that the Clerk of the

Court shall insert this stipulation in the transcript of the proceedings of May 1, 1948, as an appendix thereto.

Dated at Honolulu, T. H., July 21, 1949.

WALTER D. ACKERMAN, JR.,
Attorney General of Hawaii.

By /s/ RHODA V. LEWIS,
Assistant Attorney General.

BOUSLOG AND SYMONDS,
By /s/ HARRIET BOUSLOG.

CHART I

Percentage Comparison, Race of Population of Maui County (1) and of Grand Jury List, 1947, Maui County.

Japanese	
24,183	43.2%
7	14.0%
Filipino	
10,509	18.8%
0	0
Part-Hawaiian	
7,915	14.1%
12	24.0%
Caucasian	
6,989	12.5%
27	54.0%
Hawaiian	
2,946	5.3%
0	0

Other Races

(Koreans, Puerto Ricans)

1,925 3.4%

0 0

Chinese

1,513 2.7%

4 8.0%

1. Census Classification of Race of Population of Maui County. 1940 Population—55,980. Department of Health, Bureau of Health (Vital) Statistics, T. H., Show Little Change in Racial Characteristics, 1940 to 1946. Population is Estimated, As of July 1, 1946—55,904.

CHART II

Percentage Comparison of "Nationality" of Population of Maui County, 1940, and of Persons on the 1947 Grand Jury Panel, Maui County (1). "Nationalities" roughly Ranked as to Socio-Economic Status.

Haole

±2043 ± 3.6%

21 42.0%

Portuguese

±4946 ± 8.8%

6 12.0%

Cauc.-Hawaiian

±4113 ± 7.4%

10 20.0%

Other Part-Hawaiian

±3802 ± 6.8%

2 4.0%

Chinese

1513 2.7%

4 8.0%

Japanese

24,183 43.2%

7 14.0%

Korean

± 770 ± 1.4%

0 0

Hawaiian

2946 5.3%

0 0

Puerto Rican

±1078 ± 1.9%

0 0

Filipino

10,509 18.8%

0 0

1. Number of Haoles ("Other Caucasians"), Portuguese (including Spaniards), Caucasian-Hawaiians and Other Part-Hawaiians, Koreans and Puerto Ricans obtained by carrying forward the 1930 proportions of these categories.

CHART III

Percentage Comparison, Socio-Economic Classes, Gainfully Employed Persons of Maui County, 1940, and Grand Jury List Maui County, 1947(1).

Proprietors and Managers Important Firms and/or Large Branches

± 100 0.6%

12 24.0%

Other Prop., Mgrs., and Officials, and Foremen

± 856 ± 4.9%

20 40.00

Professional and Semi-Prof. Workers

556 3.2%

4 8.0

Farm Foremen

± 443 ± 2.5%

0 0

Farmers

± 444 ± 2.5%

2 4.0

Clerical, Sales, Etc.

1122 6.4%

6 12.0%

Craftsmen and Operatives

±3196 18.1%

3 6.0%

Laborers, Non-Farmers

1747 9.9%

1 2.0%

Farm Laborers

8301 ±47.1%

0 0

Service Workers

822 4.7%

0 0

Occupation Not Specified

60	.....	0.3%
2	.....	4.0%

1. Adapted from Table 3, with certain classes combined and/or divided; Grand Jury data corrected.

[Endorsed]: Filed July 23, 1949 U.S.C.A.

[Title of District Court and Causes.]

LIST OF EXHIBITS MARKED IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT FOR IDENTIFICATION ONLY, TO WHICH THE DEFENDANTS HAVE SPECIAL OBJECTIONS

Reference is made to transcript of the proceedings of May 1, 1948, page 5, incorporating in the record the list of exhibits which in the grand jury proceeding in the Circuit Court of the Second Judicial Circuit were only marked for identification, and were not received in evidence. Such exhibits are as follows:

Movants' Exhibit A for identification, list of officers of various companies.

2 for identification, occupational index by races.

10 for identification, a paper headed "Table 7," relating to number of qualified women for the grand jury panel in Maui County.

20 for identification, a tabulation of families by precincts and races.

21 for identification, same type of tabulation.

Dated at Honolulu, T. H., this 18th day of May,
1948.

Respectfully submitted,
/s/ RHODA V. LEWIS,
Assistant Attorney General,
Attorney for Defendants.

[Endorsed]: Filed May 18, 1948.

[Title of District Court and Causes.]

CERTIFICATE OF CLERK

United States of America,
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled causes, consists of the following listed original pleadings and exhibits of record in said causes:

Civil No. 828

Complaint, Summons.

Affidavit of Harriet Bouslog in Support of Order
to Show Cause and Temporary Restraining Order

Amendment to Complaint for Injunction

Stipulation (filed December 4, 1947)

Motion to Dissolve Temporary Restraining Order
and Notice of Motion

Return to Order to Show Cause

Memorandum of Authorities on Motion to Dissolve

Temporary Restraining Order and on Return to Order to Show Cause

Exhibits on Motion to Dissolve Temporary Restraining Order and on Return to Order to Show Cause

Stipulation (filed December 22, 1947)

Order on Motion to Dissolve Temporary Restraining Order and Amended Temporary Restraining Order

Stipulation and Order Joining Additional Plaintiffs

Affidavit of Harriet Bouslog

Stipulation (filed January 10, 1948)

Motion for More Definite Statement, Motion to Dismiss Action and for Summary Judgment and Defendants' Exhibits I, J and K

Memorandum of Authorities on Motions and Appendix

Defendants' Exhibit L Supplementing Motions filed January 14, 1948

Bill of Particulars

Order (Filed April 20, 1948)

Stipulation (Filed April 23, 1948)

Answer

Motion Suggesting the Abatement of the Action as to the Defendants E. R. Bevins, Individually and as County Attorney for the County of Maui, and Wendell F. Crockett, Individually and as Deputy to the County Attorney for the County of Maui, and for the Dismissal of the Action as to Them and Affidavit and Memorandum

Order (Filed February 23, 1949)

Return to Rule to Show Cause Issued February 23, 1949

Affidavit of Service of Return to Rule to Show Cause Issued February 23, 1949

Return to Order to Show Cause (Bevins)

Return to Order to Show Cause (Crockett)

Affidavit of Service of Return to Order to Show Cause

Order Discharging Rule to Show Cause Decree

Notice of Appeal (Ackerman and Lane)

Notice of Appeal (Bevins and Crockett)

Bond on Appeal

Order Extending Time to File and Docket Record with the United States Court of Appeals for the Ninth Circuit

Waiver of Bond on Appeals to Appellants Wendell F. Crockett and E. R. Bevins

Order to Show Cause and Temporary Restraining Order

Civil No. 836

Complaint, Summons

Return to Order to Show Cause

Memorandum of Authorities on Return to Order to Show Cause

Temporary Restraining Order and Order Granting Request for Three-Judge Court

Motion for More Definite Statement, Motion to Dismiss Action and for Summary Judgment, Notice of Motions and Exhibits M, N, and O

1950

W. D. Ackerman etc., et al.

Memorandum of Authorities on Motions

Order (Filed April 19, 1948)

Stipulation

Answer

Motion Suggesting the Abatement of the Action as to the Defendants E. R. Bevins, Individually and as County Attorney for the County of Maui, and Wendell F. Crockett, Individually and as Deputy to the County Attorney for the County of Maui, and for the Dismissal of the Action as to Them and Affidavit and Memorandum

Order (Filed February 23, 1949)

Return to Rule to Show Cause Issued February 23, 1949

Affidavit of Service of Return to Rule to Show Cause Issued February 23, 1949

Return to Order to Show Cause (Bevins)

Return to Order to Show Cause (Crockett)

Affidavit of Service of Return to Order to Show Cause

Order Discharging Rule to Show Cause

Decree

Notice of Appeal (Ackerman)

Notice of Appeal (Bevins and Crockett)

Bond on Appeal

Order Extending Time to File and Docket Record with the United States Court of Appeals for the Ninth Circuit

Waiver of Bond on Appeal as to Appellants Wendell F. Crockett and E. R. Bevins

Order to Show Cause

Civil Nos. 828 and 836

Order of Consolidation

List of Exhibits Marked in the Circuit Court of
the Second Judicial Circuit for Identification
Only, to Which the Defendants Have Special
Objections

Opinion

Suggestion for Incorporation in the Record on Ap-
peal of Certain Matters of Record in this Court
Stipulation and Order for Consolidation of Record
Order (Filed June 27, 1949)

Designation of Record on Appeal

Designation of Record on Appeal
(Bevins and Crockett)

Stipulation (Filed July 19, 1949)

Plaintiffs' Exhibits Nos. 1 to 13, inclusive, and 17
to 33, inclusive.

Defendants' Exhibits "A-1" to "R," inclusive
Court's Exhibits 1 and 2

I further certify that included in said record on
appeal are the originals and copies of the tran-
scripts of proceedings of December 10, 1947, April
15, 16, 19, 20, beginning April 23, and May 1, 1948
as filed in these causes; and also copies of the
minutes of this Court of December 1, 10, and 20,
1947, January 6, April 15, 16, 17, 19, 20, 23, 24, 26,
27, and May 1, 1948.

In Witness Whereof, I have hereunto set my
hand and affixed the seal of said District Court,
this 21st day of July, A.D. 1949.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk, United States District Court, District of
Hawaii.

[Endorsed]: No. 12300. United States Court of Appeals for the Ninth Circuit. Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii and Jean Lane, individually as Chief of Police of the County of Maui, Appellants, v. International Longshoremen's & Warehousemen's Union, a voluntary, unincorporated association and labor union, et al., Appellees, and E. R. Bevins, individually and as County Attorney for the County of Maui, and Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, Appellants, vs. International Longshoremen's & Warehousemen's Union, a voluntary, unincorporated association and labor union, et al., Appellees. Transcript of Record. Appeals from the United States District Court for the Territory of Hawaii.

Filed July 23, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 12300 - 12301

Civil No. 828

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii, JEAN LANE, individually and as Chief
of Police of the County of Maui, E. R.
BEVINS and WENDELL F. CROCKETT,
Defendant-Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union, et
al,

Plaintiff-Appellees.

Civil No. 836

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii, E. R. BEVINS and WENDELL F.
CROCKETT,

Defendant-Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union, et
al,

Plaintiff-Appellees.

APPELLANTS' DESIGNATION OF RECORD
TO BE PRINTED

Pursuant to Rule 19 of this Court appellants hereby designate for printing the following portions of the record on appeal. (References in the left-hand column are to item numbers as set forth in the designation of the record on appeal.)

Civil No. 828

1. Complaint filed December 1, 1947, and Exhibits D and E (memorandum of points and authorities to be omitted; Exhibits A, B and C to be omitted as being merely copies of law).

2. Affidavit of Harriet Bouslog in support of order to show cause and temporary restraining order, filed December 1, 1947.

3. Summons issued December 1, 1947.

4. Order to show cause and temporary restraining order issued December 1, 1947 at 7:00 p.m.

Marshal's return of service of summons, order to show cause, and temporary restraining order, to be so printed as to show the dates of service on the respective parties.

6. Amendment to complaint for injunction filed December 4, 1947.

8. Motion to dissolve temporary restraining order and notice of motion served and filed December 8, 1947.

9. Return to order to show cause served and filed December 8, 1947.

11. Exhibits A to E inclusive on motion to dissolve temporary restraining order and on return to

order to show cause served and filed by defendants December 8, 1947, and Exhibits G and H filed in open court December 10, 1947. Exhibit F not to be printed, being reported in Volume 37, Hawaii Reports, page 625.

13. Order on motion to dissolve temporary restraining order and amended temporary restraining order dated December 10, 1947 at 5:30 p.m., filed December 23, 1947.

14. Stipulation and order joining additional plaintiffs filed December 31, 1947. Exhibit F not to be printed, being the same as the criminal complaint appearing in defendants' Exhibit K, part of item 17. Exhibit G not to be printed, being the same as the decision appearing in defendants' Exhibit K, part of item 17.

15. Affidavit of Harriet Bouslog with reference to additional plaintiffs, filed January 7, 1948.

17. Motion for more definite statement, motion to dismiss action and for summary judgment, and notice of motion, filed January 14, 1948, together with Defendants' Exhibits I, J and K, consisting of:

Exhibit I, affidavit of Andrew S. Freitas, Assistant Chief of Police, re Kalua incident, July 15, 1947.

Exhibit J, affidavit of Andrew S. Freitas, Assistant Chief of Police, re incident at Kaumalapau Wharf, July 14, 1947.

Exhibit K, criminal complaint against and commitment of Agliam and thirty-five others to await

action of the grand jury, to be printed in toto, including the transcripts of proceedings.

19. Defendants' Exhibit L, filed January 17, 1948, supplementing motions filed January 14, 1948.

20. Plaintiffs' bill of particulars filed January 28, 1948, together with transcripts of proceedings in Criminal Nos. 2412 and 2413, Circuit Court, Second Judicial Circuit, Territory of Hawaii, before Honorable Albert M. Cristy, Substitute Judge, held at Wailuku, Maui, September 15, 16, 17 and 18, 1947. (Movants' Exhibits 5, 6, 7, 8, 9 and 12 are not to be printed, being part of Plaintiffs' Exhibit 25 in the United States District Court.)

22. Order re defendants' motions dated April 19, 1948 and filed April 20, 1948.

23. Stipulation dated April 22, 1948 and filed April 23, 1948.

24. Answer dated April 22, 1948 and filed April 23, 1948.

25. Order consolidating, for hearing and trial, Civil Nos. 828 and 836, filed April 23, 1948.

26. Opinion of the court filed December 27, 1948.

27. Order amending opinion of December 27, 1948, filed January 18, 1949.

28. Motion suggesting the abatement of the action as to the defendants E. R. Bevins, individually and as County Attorney for the County of Maui, and Wendell F. Crockett, individually and as Deputy County Attorney for the County of Maui, and for the dismissal of the action as to them, and affidavit filed by Walter D. Ackerman, Jr., Attorney

General of Hawaii, January 20, 1949. (Memorandum not to be printed.)

29. Order (rule to show cause) of February 23, 1949.

30. Return to rule to show cause filed by Walter D. Ackerman, Jr., Attorney General of Hawaii, Jean Lane, Chief of Police of the County of Maui, Harold L. Duponte, County Attorney for the County of Maui, and Thomas Ogata, Deputy County Attorney of the County of Maui, March 10, 1949.

32. Return of E. R. Bevins to order to show cause, dated March 8, 1949 and filed in propria persona March 11, 1949.

33. Return of Wendell F. Crockett to order to show cause, dated March 11, 1949 and filed in propria persona March 12, 1949.

35. Order discharging rule to show cause, filed March 24, 1949.

36. Decree filed March 29, 1949.

37. Notice of appeal filed by Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, and Jean Lane, individually and as Chief of Police of the County of Maui, April 26, 1949.

38. Notice of appeal filed by E. R. Bevins and Wendell F. Crockett, April 26, 1949.

40. Bond on appeal executed by Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, and Jean Lane, individually and as Chief of Police of the County of Maui as principles, and United States Fidelity and

Guaranty Company of Baltimore, Maryland, as surety, filed April 28, 1949.

41. Order extending time to file and docket record with the United States Court of Appeals for the Ninth Circuit, Filed May 26, 1949.

42. Suggestion for incorporation in the record on appeal of certain matters of record in this court, together with affidavit and letter filed June 23, 1949, and such order as the court may make relative thereto.

43. Stipulation and order for the consolidation of Civil Nos. 828 and 836 for filing of the records on appeal and docketing of the appeals, filed June 27, 1949.

45. Waiver of bond on appeal as to appellants Wendell F. Crockett and E. R. Bevins.

46-A. Statement of points on appeal pursuant to Rule 19, subdivision 6, Rules of the United States Court of Appeals for the Ninth Circuit, together with statement filed by the appellants Wendell F. Crockett and E. R. Bevins.

46. This designation of the record on appeal, together with designation filed by the appellants Wendell F. Crockett and E. R. Bevins.

Civil No. 836

47. Complaint and Exhibit E (memorandum of points and authorities not to be printed; Exhibits A to D inclusive not to be printed, being merely copies of laws).

48. Summons issued December 31, 1947.

49. Order to show cause issued December 31, 1947.

50. Return of service made January 5, 1948.

51. Return to order to show cause and affidavit, filed January 6, 1948.

53. Temporary restraining order and order granting request for three-judge court, dated and filed January 9, 1948.

56. Motion for more definite statement, motion to dismiss action and for summary judgment, and notice of motion, filed January 20, 1948, together with Exhibits M and N (Exhibit O not to be printed, being pages 149-162 of the transcript of the grand jury hearing in the Second Circuit, and the entire transcript being designated for printing as part of item 20).

58. (Bill of particulars filed January 28, 1948 in Civil No. 828 and by the court's ruling of April 16, 1948 entered as well in Civil No. 836, should not be printed again but the printed record should show that this bill of particulars is the same as that printed for Civil No. 828, item 20, *supra*.)

60. Order re defendants' motions, dated and filed April 19, 1948.

61. Stipulation dated April 22, 1948, filed April 23, 1948.

62. Answer dated April 22, 1948 and filed April 23, 1948.

63. (Order consolidating for hearing and trial Civil Nos. 828 and 836, filed April 23, 1948, should not be printed again but the printed record should

show that this order is the same as that printed for Civil No. 828, item 25, *supra.*)

64. (Opinion of the court filed December 27, 1948, should not be printed again, but the printed record should show that this opinion is the same as that printed in Civil No. 828, item 26, *supra.*)

65. (Order amending opinion of December 27, 1948, filed January 18, 1949, should not be printed again but the printed record should show that this order is the same as that printed for Civil No. 828, item 27, *supra.*)

66. (Motion suggesting the abatement of the action as to the defendants E. R. Bevins, individually and as County Attorney for the County of Maui, and Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, and for the dismissal of the action as to them, and affidavit, filed by Walter D. Ackerman, Jr., Attorney General of Hawaii, January 20, 1949, in Civil No. 836 as well as Civil No. 828, should not be printed, but the printed record should show that it was in the same form as that filed for Civil No. 828. This will have been printed, being item 28, *supra.*)

67. (Order (rule to show cause) of February 23, 1949, issued in Civil No. 836 as well as Civil No. 828, should not be printed, but the printed record should show that it was in the same form as that issued in Civil No. 828, except that Jean Lane, Chief of Police of the County of Maui, was not

ordered to show cause. This will have been printed, being item 29, *supra*.)

68. (Return to rule to show cause filed by Walter D. Ackerman, Jr., Attorney General of Hawaii, Harold L. Duponte, County Attorney for the County of Maui, and Thomas Ogata, Deputy County Attorney of the County of Maui, March 10, 1949, in Civil No. 836 as well as Civil No. 828, should not be printed, but the printed record should show that it is in the same form as that filed for Civil No. 828, except for the omission of Jean Lane and changes in wording so as to make proper references to the respective causes. The return in Civil No. 828 will have been printed, being item 30, *supra*.)

70. (Return of E. R. Bevins to order to show cause, dated March 8, 1949 and filed in *propria persona* March 11, 1949 in Civil No. 836 as well as Civil No. 828, should not be printed but the printed record should show that it is in the same form as that filed for Civil No. 828. This will have been printed, being item 32, *supra*.)

71. (Return of Wendell F. Crockett to order to show cause, dated March 11, 1949 and filed in *propria persona* March 12, 1949 in Civil No. 836 as well as Civil No. 828, should not be printed, but the printed record should show that it is in the same form as that filed for Civil No. 828. This will have been printed, being item 33, *supra*.)

73. (Order discharging rule to show cause, filed March 24, 1949, made in Civil No. 836 as well as Civil No. 828, should not be printed, but the printed

record should show that it is in the same form as that made in Civil No. 828. This will have been printed, being item 35, supra.)

74. Decree filed March 29, 1949.

75. Notice of appeal filed by Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, April 26, 1949.

76. Notice of appeal filed by E. R. Bevins and Wendell F. Crockett, April 26, 1949.

78. (Bond on appeal executed by Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, as principal, and United States Fidelity and Guaranty Company of Baltimore, Maryland, as surety, filed April 28, 1949 in Civil No. 836 as well as Civil No. 828, should not be printed but the printed record should show that it is in the same form as that filed for Civil No. 828, except for the omission of Jean Lane. The bond in Civil No. 828 will have been printed, being item 40, supra.)

79. Order extending time to file and docket record with the United States Court of Appeals for the Ninth Circuit, Filed May 26, 1949.

80. (Suggestion for incorporation in the record on appeal of certain matters of record in this court, together with affidavit and letter, filed June 23, 1949, and such order as the court may make relative thereto, should not be printed again but the record should show that it is the same as that printed for Civil No. 828, being item 42, supra.)

81. (Stipulation and order for the consolida-

tion of Civil Nos. 828 and 836 for filing of the records on appeal and docketing of the appeals, filed June 27, 1949, should not be printed again but the record should show that it is the same as that printed for Civil No. 828, being item 42, *supra*.)

83. (Waiver of bond on appeal as to appellants Wendell F. Crockett and E. R. Bevins, filed in Civil No. 836 as well as Civil No. 828, should not be printed, but the printed record should show that it is in the same form as that filed for Civil No. 828. This will have been printed, being item 45, *supra*.)

84. (Designations of record on appeal should not be printed again, but the printed record should show that they are the same as those printed for Civil No. 828, being item 46, *supra*.)

84-A. (Statements of points on appeal pursuant to Rule 19, subdivision 6, Rules of the United States Court of Appeals for the Ninth Circuit, should not be printed again but the printed record should show that they are the same as those printed for Civil No. 828, being item 46-A, *supra*.)

Transcripts of Testimony and Proceedings

85. (Record of the proceedings before Young Wa, Acting District Magistrate of the District Court of Lanai, on the preliminary hearing had by the plaintiffs Agliam et al, should not be printed again but the printed record should show that this is the same as Exhibit K, filed with defendants' motions of January 14, 1948, part of item 17, *supra*.)

86. (Transcript of proceedings in Criminal Nos. 2412 and 2413 in the Circuit Court, Second Circuit, Territory of Hawaii, before Honorable Albert M. Cristy, Substitute Judge, Wailuku, Maui, September 15, 16, 17 and 18, 1947, should not be printed again but the printed record should show that this is the same transcript filed with plaintiffs' bill of particulars January 28, 1948, part of item 20, *supra*.)

87. Transcript of the proceedings in Civil No. 828 on December 10, 1947, filed June 21, 1948.

88. Transcript of the proceedings of April 15, 1948 in Civil Nos. 828 and 836 prior to argument, filed June 30, 1948, together with such further transcript of the proceedings of April 15, 1948 as plaintiff-appellees may file.

89. Transcript of a portion of the argument of April 16, 1948 in Civil Nos. 828 and 836, filed January 25, 1949, together with such further transcript of the proceedings of April 16, 1948 as plaintiff-appellees may file.

90. Such transcript of the proceedings of April 17, 1948 as plaintiff-appellees may file.

91. Transcript of the proceedings of April 19, 1948 in Civil Nos. 828 and 836, filed June 28, 1949.

92. Transcript of a portion of the proceedings of April 20, 1948 in Civil Nos. 828 and 836, together with such further transcript of the proceedings of April 20, 1948 as plaintiff-appellees may file.

93. Transcript of the proceedings of April 23,

1948 to April 27, 1948 inclusive, in Civil Nos. 828 and 836, filed June 9, 1948.

94. Transcript of the proceedings of May 1, 1948 in Civil Nos. 828 and 836, together with "List of Exhibits Marked in the Circuit Court of the Second Judicial Circuit for Identification Only, to Which the Defendants Have Special Objections", filed May 18, 1948 by permission of the court in open court May 1, 1948.

Exhibits

The following are in addition to the exhibits heretofore listed as having been annexed to or filed with various pleadings, motions and other papers, some of which were admitted in evidence as and to the extent shown by the stipulations filed April 23, 1948 in Civil Nos. 828 and 836.

95. The following exhibits or parts of exhibits, marked as Plaintiffs' Exhibits:

Exhibit 1, in two parts, being War Food Administration determination of fair and reasonable wage rates during the calendar year 1943, and War Food Administration determination of fair and reasonable wage rates during the calendar year 1944.

Exhibit 3, agreement between the International Longshoremen's and Warehousemen's Union and Hawaii's sugar industry, 1947-1948, to be printed in part, to wit, Sections 7, 18, 19, and 20 of the agreement.

Exhibit 5, in two parts, being criminal complaint

sworn by F. B. DeMello, November 13, 1946, against Mac Masato Yamauchi and others as to an incident of November 6, 1946, concerning one Harlow Wright; and criminal complaint sworn by F. B. DeMello, November 13, 1946, against Mac Masato Yamauchi and others as to an incident of November 6, 1946, concerning James Backlund and Michael Hopland Nelson.

Exhibit 6, in two parts, being an indictment in Territory v. Mac Masato Yamauchi et al, Criminal 2379, Circuit Court, Second Circuit, Territory of Hawaii; and an indictment in Territory v. Mac Masato Yamauchi et al, Criminal No. 2380, Circuit Court, Second Circuit, Territory of Hawaii.

Exhibit 7, in two parts, being judgment and sentence of Circuit Court, Second Judicial Circuit, Territory of Hawaii, in Criminal No. 2379; and judgment and sentence of Circuit Court, Second Judicial Circuit, Territory of Hawaii, in Criminal No. 2380.

Exhibit 8, letter of Maui Chamber of Commerce, dated April 29, 1948, and enclosed resolution adopted by Board of Directors, Chamber of Commerce of Honolulu, June 5, 1947.

Exhibit 9, indictment in Territory v. Joseph Kaholokula et al, returned by the grand jury, Second Judicial Circuit, October 30, 1946, marked No. 2365.

Exhibit 10, plantation house rules, Hawaiian Commercial and Sugar Company, Limited.

Exhibit 11, (mimeographed copies of laws) not

to be printed, but the printed record should describe the exhibit, as set forth in the appellants' designation of record on appeal.

Exhibit 12, mimeographed sheet headed "Causes for Discipline or Discharge." Appended safety rules not to be printed.

Exhibit 13, oral decision of the Honorable Cable A. Wirtz in Criminal No. 2242 in the Circuit Court, Second Circuit, Territory of Hawaii, entitled Territory v. Basiliso Arruiza, rendered December 23, 1947.

Exhibit 17, excerpt from book by Romanzo Adams "Interracial Marriage in Hawaii; a Study of the Mutually Conditioned Processes of Acculturation and Amalgamation", published by the Macmillan Company, 1937.

Exhibit 18, to be printed in part as follows:

Maui Agricultural Company Annual Report for 1947, the following parts to be printed without illustrations or pictures: pages 2, 3, 19, 24, 25, 26.

Typewritten sheet headed "Baldwin Packing Company, Ltd.—1946", to be printed.

Pioneer Mill Company Annual Report for 1947, the following parts to be printed: pages three, four, and five (graph to be omitted), and the Supervisory Staff on the inside of the back cover.

Table entitled "Occupational Index by Races, Territory of Hawaii, 1940", to be printed.

Exhibit 20, in two parts, being a table headed "Table Showing Percentage of 'Other Caucasians' in Population in Maui County and on Grand Jury

Panel for Years 1942 to 1947''; and table headed "Table Showing Proportion of 'Other Caucasians' in Total Population of Maui County 1920-1940".

Exhibit 21, table headed "Table of Racial and/or National Extraction and Occupation of Persons on Maui Grand Jury List 1947".

Exhibit 22, certificate of County Clerk, County of Maui, dated April 22, 1948, headed "Number of Filipino voters registered for the election years covering 1934-1946".

Exhibit 23, questionnaires in the Circuit Court, Second Circuit, of Charles Edward Thompson, Edmund Nunes, Kenneth W. Auld, Eugene Kealoha Ayers, Edward Henry Kittredge Baldwin, Richard H. Baldwin, Edwin S. Bowmer, Alfred Sawyer Burns, William Preston Burns, Ralph O. Cornwell, Manuel Correia, Jr., Allan Hart Ezell, Stanley Cornwell Friel, Walter William Holt, Charles E. Morris, Edwin Kiyoshi Muroki, Toshio Onuma, John Plunkett, Paul Raymond Rinehart, Albert G. Simpson and Anthony Apo Tam.

Exhibit 24, questionnaires in the Circuit Court, Second Circuit, of Vincente Compania Saloricman, Narcisso Sipe, Vincente Engoring, Salvador Seno, Gilbert Eufonio Gonzado, Francis Damion Segundo, Frederick Bibilone Saranillio, Douglas Marcelino Gaboya, John Cornelio, Ted Simplicio Herolaga, George Ramaila, and Earl Larato Herolaga. The marking of "not qualified", "questionable", or "qualified", appearing in the left hand corner, should be included in the printing.

Exhibit 25, to be printed in part, being the following as marked in the Second Judicial Circuit, Territory of Hawaii:

Movants' Exhibit A for identification, list of officers of various companies.

Movants' Exhibit 5, Table I, entitled "Caucasians and non-Caucasians in the Population and Grand Jury Panel of Maui County".

Movants' Exhibit 6, Table II, entitled "Caucasians (including part-Hawaiians) and non-Caucasians in the Population and the Grand Jury Panel of Maui".

Movants' Exhibit 7, Table 3, entitled "Distribution of Employed Workers by Major Occupation Group in the Population and in the Panel".

Movants' Exhibit 8, Table 4, entitled "Class of Worker of Employed Persons (Except on Public Emergency Work) Maui County".

Movants' Exhibit 9, Table 5, entitled "Class of Worker of Employed Persons Maui County".

Movants' Exhibit 13, list of names headed "1946 Register of Male Voters of County of Maui, 3rd Representative District, 2nd Precinct—Honolua (Non-ILWU Members)".

Movants' Exhibit 14, list of names headed "1946 Register of Male Voters of County of Maui, 3rd Representative District, 2nd Precinct—Honolua (ILWU Members)".

Movants' Exhibit 15, typewritten sheet headed "Length of Service of Members of Grand Jury Panel, 1942-1947, Maui County".

Movants' Exhibit 17, table headed "List of Registered Voters for the General Election, November 5th, 1946, Third Representative District by Nationalities". Only the first sheet to be printed, covering male voters.

Exhibit 26, lists of names entitled "Haoles on Grand Jury Panels".

Exhibit 27, tables of Hawaiian Sugar Planters Association census, only page 3 to be printed, being Summary for Maui.

Exhibit 28, list of names headed "Maui Police Commission as Constituted during the Calendar Years of 1946 and 1947".

Exhibit 31, statement received from Mac Masato Yamauchi by Assistant Chief Freitas, Wailuku Police Station, Thursday, November 7, 1946.

Exhibit 32, certificate of the Treasurer of the Territory of Hawaii, concerning the amended by-laws of the Oriental Benevolent Association, the office held by Philip P. Gamponia therein, and the dissolution of said association.

96. The following exhibits, or parts of exhibits, marked as Defendants' Exhibits:

Exhibit N, statement received from Abraham Makekau by Captain J. D. Seabury, Lanai Police Station, Tuesday, July 15, 1947.

Exhibit P, biography of William Little Lee, first Chief Justice of the Hawaiian Supreme Court.

Exhibit Q, portions of Senate Document No. 16, 55th Cong. 3d Sess., the part to be printed being the letters of transmission on the second page of the

exhibit, the preface to the copy of the Civil and Penal Laws transmitted with the report, and Chapters 28 and 38 of the Penal Laws so transmitted.

Exhibit R, portions of House of Representatives Report No. 305, 56th cong., 1st Sess., the part to be printed being the opening paragraph of the report and the section of the report headed "The Judiciary of the Territory of Hawaii and of the New Territory after its Organization", beginning on the second page of the exhibit and including all but the last four lines on the last page of the exhibit.

97. The following exhibits, or parts of exhibits, marked as Court's Exhibits:

Exhibit 1, to be printed in part as follows: Report of the jury commissioners and lists of names of persons selected to serve as jurors in and for the Second Circuit, Territory of Hawaii, for the year 1947, being the same as Court's Exhibit 1 in the Circuit Court, Second Circuit, Territory of Hawaii; and Clerk's minutes of the drawing of grand jurors, Friday, December 27, 1946, being the same as Court's Exhibit 2 in the Second Judicial Circuit, Territory of Hawaii.

Exhibit 2, in four parts: Charge to the grand jury filed March 25, 1947 in the Circuit Court, Second Circuit, Territory of Hawaii, being the same as Prosecution's Exhibit D in the said Circuit Court, Second Circuit. Summary of questionnaires showing by precinct the number marked as "Qualified", "Questionable", "Exempted", "Not qualified", "Out of jurisdiction, moved", "Temporarily out of

jurisdiction, Army", "Deceased", "Questionnaire not received", and the total of each precinct, being the same as Prosecution's Exhibit C in the Circuit Court, Second Circuit, Territory of Hawaii. Table entitled "List of registered voters for the general election November 7, 1944, Third Representative District, by Nationalities", covering male voters, being the same as Prosecution's Exhibit A in the Circuit Court, Second Circuit, Territory of Hawaii. Table entitled "List of Votes cast for the general election November 7, 1944, Third Representative District, by Nationalities", covering male voters, being the same as Prosecution's Exhibit B in the Circuit Court, Second Circuit, Territory of Hawaii.

And the following are also designated for printing:

98. All of the Clerk's minutes in Civil Nos. 828 and 836.

99. The form or forms of questionnaire blank used for prospective jurors in the United States District Court for the District of Hawaii during the calendar years 1946, 1947, 1948 and 1949.

Dated at Honolulu, T. H., this 14th day of July, 1949.

/s/ RHODA V. LEWIS,

Assistant Attorney General, Attorney for Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, and Jean Lane, individually and as Chief of Police of the County of Maui, in Civil No. 828; Attorney for Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, in Civil No. 836.

[Endorsed]: Filed July 23, 1949.

[Title of Court of Appeals and Causes.]

APPELLANTS' DESIGNATION OF RECORD
TO BE PRINTED

Come now E. R. Bevins and Wendell F. Crockett, defendant-appellants above named and for their designation of the record to be printed herein, hereby join in and adopt the Designation of Record to be Printed filed by the appellants Walter D. Ackerman, Jr., and Jean Lane.

Dated: July 15, 1949.

/s/ E. R. BEVINS,

In Propria Persona.

/s/ WENDELL F. CROCKETT,

In Propria Persona.

[Endorsed]: Filed July 23, 1949.

[Title of Court of Appeals and Causes.]

STATEMENT OF POINTS ON APPEAL
PURSUANT TO RULE 19

1. The court erred in denying defendants' motion to dissolve the temporary restraining order in Civil No. 828, in issuing an amended temporary restraining order therein, and in issuing a temporary restraining order in Civil No. 836.

2. The court erred in denying defendants' motions in Civil Nos. 828 and 836 to dismiss the actions plaintiffs to make more definite statements (parts I and II of said motions).

3. The court erred in denying defendants' motions in Civil Nos. 828 and 836 to dismiss the actions for lack of jurisdiction over the subject matter (part III of said motions).

4. The court erred in holding that it had jurisdiction over these causes by virtue of the Civil Rights Acts and section 1343 of Revised Title 28, United States Code (Opinion, page 4, footnote 1; pages 49-50).

5. The court erred in holding that the allegations and proof of jurisdictional amount by the several parties plaintiff were immaterial (Opinion, page 9, footnote 5).

6. The court erred in finding that the ILWU sustained losses in excess of \$3,000 (Opinion, page 9, footnote 5).

7. The court erred in holding it had jurisdiction of these causes by virtue of section 1337 of Revised

Title 28, United States Code (Opinion, page 4, footnote 1; pages 50-51).

8. The court erred in holding and decreeing that it had the authority to sit as a three-judge court under section 2281, Revised Title 28, United States Code (Opinion, page 34).

9. The court erred in holding and decreeing that if it was not a properly constituted three-judge court sitting under section 2281, Revised Title 28, United States Code, it was sitting as a court en banc (Opinion, page 46), when said court did not consist of all of the judges for the district in active service, and the Honorable J. Frank McLaughlin was neither disqualified nor absent.

10. The court erred in denying defendants' motions in Civil Nos. 828 and 836 to dismiss so much of the complaints as purported to allege, in favor of the individual plaintiffs named as defendants in criminal proceedings pending in the Circuit Court of the Territory of Hawaii, claims for relief against the enforcement of the statutes complained of, and the court further erred in denying defendants' motions for summary judgments against said plaintiffs (parts IV and V of the motion in Civil No. 828 and part IV of the motion in Civil No. 836).

11. The court erred in restraining the defendants from proceeding with the prosecution commenced July 16, 1947 against the plaintiffs Diego Barbosa and the others named in paragraph 11 of the decree in Civil No. 828, under any complaint or indictment based on the unlawful assembly and riot statute.

12. The court erred in restraining the defendants from proceeding with the prosecution commenced July 15, 1947 against the plaintiffs Abraham Makekau and the others named in paragraph 12 of the decree in Civil No. 828, under any complaint or indictment based on the unlawful assembly and riot statute.

13. The court erred in restraining the defendants from proceeding with the prosecution commenced August 1, 1947, against the plaintiffs Bartolome Agliam and the others named in paragraph 13 of the decree in Civil No. 828, under any complaint or indictment based on the unlawful assembly and riot statute.

14. The court erred in restraining the defendants from proceeding with the prosecution commenced in October 1946 against the plaintiffs Joseph Kaholokula and the others named in paragraph 11 of the decree in Civil No. 836 under any complaint or indictment based on the unlawful assembly and riot statute or the conspiracy statute.

15. The court erred (Opinion, pages 69-80) in failing to apply the rule that where criminal prosecutions are pending in a state or territorial court a federal district court is not authorized to use injunction proceedings as a means of quashing such criminal charges, said rule further requiring the defendants in the criminal cases to exhaust their remedies in the system of courts where the criminal proceedings lie and upon appeal therefrom.

16. The court erred in holding that upon an

application for an injunction against criminal prosecutions pending in the courts of the Territory, under the Civil Rights Act it constitutes a ground for intervention in said proceedings by the United States District Court if said court finds that the prosecutions are not in good faith (Opinion, page 78).

17. The court erred in holding that it constituted a ground for equitable intervention in the pending criminal cases that the court would be able to act before the criminal cases could reach the Court of Appeals for the Ninth Circuit via the territorial courts (Opinion, page 80).

18. The court erred in holding that the applicability in the Territory of Hawaii of the provisions of section 2283 of Revised Title 28 is interwoven with the applicability of section 2281 of Revised Title 28 (Opinion, page 69).

19. The court erred in holding that despite section 2283 of Revised Title 28, a federal court may exercise its equity jurisdiction to prevent the trial of a defendant by a state court in a pending criminal case (Opinion, page 71).

20. The court erred in not holding the complaints fatally defective in failing to show that the plaintiffs were being prosecuted for acts of free speech, peaceable assembly, or peaceful picketing.

21. The court erred in not holding that the complaint in Civil No. 828 was fatally defective, when it was wholly speculative whether the grand jury would indict the plaintiffs under the unlawful assembly and riot act.

22. The court erred (Opinion, page 69) in failing to apply the doctrine of abstention, under which a federal court will not rule upon a constitutional question which construction of the statute has avoided or may avoid.

23. The court erred in holding and decreeing that the unlawful assembly and riot law (chapter 277, Revised Laws of Hawaii 1945, as it read prior to its amendment by Act 62 of the Session Laws of Hawaii 1949) was unconstitutional.

24. The court erred (Opinion, page 75) in assuming the power to review and reverse the decision of the Supreme Court of Hawaii in *Territory v. Kaholokula*, 37 Haw. 625, and in enjoining as unconstitutional the application of the unlawful assembly and riot act in the cases of seventy-five plaintiffs, as to whom the constitutionality of said statute was *res judicata* until and unless an appellate court should reverse the holding of the Supreme Court of Hawaii.

25. The court erred (Opinion, pages 64, 75, 80) in holding that it had authority to reject as erroneous the interpretation put on the unlawful assembly and riot law by the Supreme Court of Hawaii.

26. The court erred (Opinion, pages 53-57) in construing the unlawful assembly and riot act (chapter 277, Revised Laws of Hawaii 1945, as it read prior to its amendment by Act 62 of the Session Laws of Hawaii 1949) as patterned after the dispersal of assemblies statute enacted in the reign of George I.

27. The court erred in ruling upon the meaning and effect of the dispersal provisions of the unlawful assembly and riot law (chapter 277, Revised Laws of Hawaii 1945, as it read prior to its amendment by Act 62, Session Laws of Hawaii 1949) when the same were in no way involved (Opinion, page 61).

28. With reference to the provisions of the unlawful assembly and riot law (chapter 277 of the Revised Laws of Hawaii 1945, as it read prior to its amendment by Act 62, Session Laws of Hawaii 1949) making acts which strike or tend to strike terror into others essential ingredients of the offense of riot, the court erred in holding that the law intended a subjective test (Opinion, pages 58-61), and erred in rejecting the common law test, which plaintiffs conceded to be the test of what would frighten a man of reasonably firm convictions (Transcript of Proceedings of April 16, 1948).

29. The court erred in holding that the unlawful assembly and riot act (chapter 277, Revised Laws of Hawaii 1945, as it read prior to its amendment by Act 62 of the Session Laws of Hawaii 1949) permits guilt to be implied by the mere presence on the scene of any person (Opinion, pages 60-61).

30. The court erred in speculating as to the possible use of the unlawful assembly and riot law as a field for the operation of the agent provocateur (Opinion, page 64).

31. The court erred in holding that if any part of the unlawful assembly and riot law (chapter

277, Revised Laws of Hawaii 1945, as it read prior to its amendment by Act 62 of the Session Laws of Hawaii 1949) was unconstitutional no part of it could be saved (Opinion, page 62).

32. The court erred in holding that the maximum imprisonment possible under the unlawful assembly and riot act (chapter 277 of the Revised Laws of Hawaii 1945, as it read prior to its amendment by Act 62 of the Session Laws of Hawaii 1949) had bearing upon the validity of the whole statute (Opinion, page 64), and further erred in considering the maximum imprisonment possible under the statute, when the plaintiffs had not invoked the Eighth Amendment and plaintiffs conceded no "cruel and unusual punishment" was involved (Transcript of Proceedings of April 16, 1948).

33. The court erred in taking judicial notice of the transcript of record in the appeal in the case of *ILWU v. Wirtz*, 170 F. 2d 183, a case going from the Supreme Court of Hawaii to the Court of Appeals for the Ninth Circuit (Opinion, page 21) after having excluded the same from evidence (Transcript, pages 133-135), and erred in giving weight thereto (Opinion, pages 21-22, 59).

34. The court erred in striking down as unconstitutional in its entirety the conspiracy law (chapter 243, Revised Laws of Hawaii 1945). (Opinion, pages 65-68).

35. The court erred in holding unconstitutional the portion of the conspiracy law (chapter 243, Revised Laws of Hawaii 1945) relating to the doing

of "what is obviously and directly wrongfully injurious to another" (Opinion, pages 67-68).

36. The court erred in holding that the ILWU and the class representatives were proper parties plaintiff, and in denying defendants' motions to dismiss them from the actions (part VI of the motion in Civil No. 828; part V of the motion in Civil No. 836).

37. The court erred in holding that a cause of action under the Labor Management Relations Act, 1947, was involved, in concluding that the unlawful assembly and riot act and the conspiracy law weight the scales in favor of the employer and against the employee and "cause great and irreparable harm and damage to all labor relations in Hawaii," and in concluding that if "comparatively heavy sentences" were imposed on "any substantial number" of the plaintiffs, "many years would pass before an adequate basis for collective bargaining could arise again" (Opinion, pages 50-51, 76-77), and further erred in considering said Labor Management Relations Act, 1947, when plaintiffs made no allegations thereunder.

38. The court erred in taking judicial notice of and making findings and conclusions concerning, the following subject matter, to wit, land ownership in the Territory of Hawaii, the circumstances which led the 1929 legislature to amend the unlawful assembly and riot statute, the history and status of labor relations in the Territory, the attitude of the community toward the labor movement, and the

mores of the community (Opinion, pages 12-17, 79); and further erred in considering such subject matter when no facts relating thereto were pleaded.

39. The court erred in comparing the 1943 minimum cash wage of a sugar plantation laborer of \$1.84 a day exclusive of bonus and perquisites (housing, medical attention, hospitalization, fuel and water), with the existing "approximate daily rate" in excess of \$8.00 a day inclusive of everything (Opinion, page 11).

40. The court erred in overruling defendants' objection to the admission of testimony as to whether any employer in the sugar or pineapple industry ever agreed to submit to arbitration a wage issue (Transcript, page 18), and further erred in considering said matter in its opinion (Opinion, page 12).

41. The court erred in overruling defendants' objections to the admission in evidence of the 1947-1948 agreement between the union and the Hawaiian sugar industry, Exhibit 3 (Transcript, page 27), and the letter of July 11, 1946, Exhibit 4 (Transcript, page 28).

42. The court erred in overruling defendants' objections to the admission in evidence of, and in failing to strike, the oral decision of the Honorable Cable A. Wirtz in the case of Territory v. Basiliso Arruiza, Exhibit 13 (Transcript, pages 190-192).

43. The court erred (Opinion, pages 101-102) in holding and decreeing that the union and the class representatives were entitled to relief against the

criminal statutes, and further erred in considering such matters when the complaints failed to allege, as to such union and class representatives, any justiciable controversy.

44. The court erred in holding inapplicable the doctrine that "he who comes into equity must come with clean hands" (Opinion, pages 81-82).

45. The court erred in finding true and giving weight to the statements of the witness Hall (Opinion, pages 12, 18) that the charges during the sugar strike under the unlawful assembly and riot act struck terror into the workers, that the enforcement of the said unlawful assembly and riot act and the conspiracy law necessitated a decision to terminate the pineapple workers strike, and that the union could not attempt a longshoremen's strike with the unlawful assembly and riot act hanging over their heads.

46. The court erred in overruling defendants' objections to, and in failing to strike, the following testimony:

(a) Testimony of the witness Hall concerning the longshoremen's strike not attempted by the union (Transcript, pages 21-22).

(b) Testimony of the witness Rania that the arrests of union members took away union membership (Transcript, pages 45-46).

(c) Testimony of the witness De la Cruz as to the effect on the pineapple strike of the number of arrests on the Island of Lanai during that strike (Transcript, pages 141-142), and the effect of loss

of the pineapple strike on the membership (Transcript, pages 142-144).

(d) Testimony of the witness Kawano as to the effect of the unlawful assembly and riot statute upon the ILWU (Transcript, pages 196-197).

47. The court erred in finding and concluding that the pending criminal prosecutions were "being carried on for the purpose of attack upon a labor movement rather than for the ends of justice" and were "not in good faith" (Opinion, pages 32-33, 78-79); and the court further erred in considering such matters when it was only alleged that plaintiffs were forbidden rights which were not prohibited to the other disputants in the strike situation and other groups in the community (Complaint, Civil No. 828, par. XIV, subpar. (6); Complaint, Civil No. 836, par. XI, subpar. (6)), which allegations were unsupported by the evidence or findings.

48. The court erred in concluding that if an action be brought under the Civil Rights Act to restrain criminal proceedings the motives of the prosecutor are relevant, though concededly "not relevant to the ordinary criminal proceeding" (Opinion, page 78).

49. The court erred in overruling defendants' objections to the question asked the defendant Crockett as to whether he had ever prosecuted any person for unlawful assembly and riot except as it grew out of a labor dispute (Transcript, page 282).

50. The court erred in finding "that the unlawful assembly and riot act has been employed by the

Territory only against labor groups in labor disputes, at least for the last three decades" (Opinion, pages 33, 79).

51. The court erred in overruling defendants' objections to, in failing to strike, and in giving weight to the testimony concerning incidents on the Island of Oahu (Transcript, pages 66-68, 287, 290; Opinion, pages 30-31, 78).

52. The court erred in overruling defendants' objection to, in failing to strike, and in giving weight to the testimony and exhibits concerning Mac Masato Yamauchi (Transcript, pages 54-55; Opinion, pages 25, 32).

53. The court erred in finding that excessive bail was required (Opinion, page 31).

54. The court erred in finding that the 1946 grand jury of the Second Circuit named as a defendant in an indictment Jose Pias, a dead man (Opinion, page 22, note 23).

55. The court erred in taking judicial notice of the employment of special prosecutors paid from private funds in labor cases in 1910 and 1924 (Opinion, pages 16-17).

56. The court erred in denying defendants' motions in Civil Nos. 828 and 836 to dismiss so much of the complaints as purported to allege claims for relief on account of the selection and composition of the 1947 grand jury in the Second Judicial Circuit of the Territory of Hawaii, and the court further erred in denying defendants' motions for sum-

mary judgments (part VII of the motion in Civil No. 828; part VI of the motion in Civil No. 836).

57. The court erred in denying defendants' objections to, and motion to strike, the testimony and exhibits relating to the 1947 grand jury of the Second Circuit Court, Territory of Hawaii (Transcript, pages 4-6, 204).

58. The court erred in holding that the Civil Rights Acts confer upon a federal district court the power to entertain and adjudicate allegations presented by one who is a defendant in a territorial criminal case concerning alleged deprivation of his rights under the Constitution in the selection of a territorial grand jury (Opinion, page 88).

59. The court erred in holding that the allegations of the complaint as to the composition of the 1947 territorial grand jury stated a justiciable controversy in a United States District Court (Opinion, pages 87-89).

60. The court erred in holding that it would assume equitable jurisdiction of pending territorial criminal cases and adjudicate all the material issues (Opinion, page 89).

61. The court erred in reviewing the rulings of the Honorable A. M. Cristy, Substitute Judge, Second Circuit Court, Territory of Hawaii, in connection with the challenges to the grand jury made by the plaintiffs in Civil No. 828 (Opinion, pages 91, 100).

62. The court erred in holding that the plaintiffs in Civil No. 836 could attack the composition

of the territorial grand jury in the federal court (Opinion, pages 88-89), when they had not challenged the grand jury in the territorial court, pleaded to the indictment, or in any way exhausted their remedies in the territorial courts or upon appeal therefrom.

63. The court erred in construing the complaint in Civil No: 836 as alleging that the persons who challenged the grand jury in the Circuit Court of the Territory were plaintiffs in Civil No. 836 (Opinion, page 8).

64. The court erred in construing Rule 18 of the Rules of the Supreme Court of Hawaii as only providing for a challenge to the grand jury before the first retirement of a newly impaneled grand jury (Opinion, pages 85-86).

65. The court erred in holding that the 1947 grand jury of the Second Circuit was constituted illegally (Opinion, page 98).

66. The court erred (Opinion, pages 99-100) in holding that the 1947 grand jury list of the Second Circuit was constituted in disregard of the Fifth Amendment's guarantee of indictment by a grand jury.

67. The court erred (Opinion, pages 99-100) in holding that the 1947 grand jury list of the Second Circuit was constituted in disregard of the local laws.

68. The court erred in finding, concluding and decreeing that the indictment in Criminal No. 2365 returned by the grand jury of the Second Circuit,

Territory of Hawaii, on December 2, 1947 against the plaintiff Joseph Kaholokula and the others named in paragraph 11 of the decree in Civil No. 836 was void and should be held for naught.

69. The court erred in the significance given by it to the term "haole," and in making findings as to the number of haoles on the 1947 grand jury list of the Second Circuit as compared with the number of haoles in Maui County (Opinion, pages 14-16, 92, 95).

70. The court erred in setting up an arbitrary classification consisting of the employer-entrepreneur group and their salaried employees and in finding that eighty-four per cent of the persons on the 1947 grand jury list of the Second Circuit belonged to such class (Opinion, page 92).

71. The court erred in setting up an arbitrary classification consisting of laboring men, and in finding that six persons on the 1947 grand jury list of the Second Circuit belonged to such class (Opinion, page 93).

72. The court erred in comparing the percentage of male laborers in the total male population of Maui County with the percentage of laborers on the 1947 grand jury list of the Second Circuit (Opinion, page 93).

73. The court erred in finding that all of the individual plaintiffs in both causes, other than Rania and Kawano, are employed in either the sugar industry or the pineapple industry (Opinion, page 5).

74. The court erred in finding that all of the individual plaintiffs in both causes other than Rania

and Kawano were daily wage earners (Opinion, page 5).

75. The court erred in finding a deliberate weighting of the grand jury list in favor of haoles and businessmen and against the laboring men of the community (Opinion, pages 95, 98).

76. The court erred in considering the number of persons on the 1946 grand jury list who also appeared on the previous year's list, when the 1946 list was not in issue and when the court had found that the 1947 list was not repetitive of the previous year's list (Opinion, page 97).

77. The court erred in considering the registration for the November 5, 1946 election (Opinion, pages 92-93), when the jury commissioners commenced their work prior thereto and based their work on the 1944 list of registered voters.

78. The court erred in finding that Patrick Ortello, Vicente Engoring and Salvadore Seno were Filipinos qualified for jury service (Opinion, page 93, footnote 94).

79. The court erred in finding a deliberate exclusion of Filipinos from the 1947 grand jury list (Opinion, page 95).

80. The court erred in holding that items 3 and 7 of the forms of questionnaire submitted to prospective jurors had no lawful purpose (Opinion, page 98).

81. The court erred in overruling defendants'

objections to the giving by the witness Reinecke of his opinion as to whether the 1947 grand jury list represented a cross-section of the community of Maui County and his opinion as to what constitutes a cross-section (Transcript, pages 272-275).

82. The court erred in overruling defendants' objections to testimony and exhibits concerning the years 1938 and 1939, to wit, the testimony of the witness Reinecke concerning personnel in executive positions, Gilmore's manual (Exhibit 18), the testimony of the witness Reinecke concerning interlocking of investments and offices in industry, and the monograph "Labor in the Territory of Hawaii 1939" (Exhibit 19). (Transcript, pages 222, 224, 232.)

83. The court erred in overruling defendants' objections to evidence concerning the members of the Maui Chamber of Commerce who were on the grand jury list (Transcript, pages 79-80), the members of the Maui Junior Chamber of Commerce who were on the grand jury list (Transcript, pages 93-94), and the resolution of the Maui Chamber of Commerce, Exhibit 8 (Transcript, pages 77-78), and erred in failing to strike the same.

84. The court erred in overruling defendants' objections to the admission in evidence of exhibits which in the grand jury proceedings in the Circuit Court of the Second Judicial Circuit were only marked for identification, to wit, the following parts of Exhibit 25: Movants' Exhibits A, 10 and 20 (Transcript, May 1, 1948, page 5).

85. The court erred in overruling defendants' motion to strike the testimony of the witness De la Cruz as to a conversation with Philip Gamponia in the year 1936 (Transcript, pages 474, 475), and erred in admitting in evidence the by-laws of the Oriental Benevolent Association, Exhibit 30 (Transcript, pages 464, 466).

86. The court erred in denying defendants' motion to dismiss the actions, made at the end of plaintiffs' direct case (Transcript, page 292).

87. The court erred in denying the motion of the defendant Jean Lane in Civil No. 828 to dismiss the action as to him (part XI of the motion in Civil No. 828).

88. The court erred in denying, in part, the motions of the defendant Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, suggesting the abatement of the action as to the defendants E. R. Bevins, individually and as County Attorney for the County of Maui, and Wendell F. Crockett, individually and as Deputy County Attorney for the County of Maui, and for the dismissal of the actions as to them, and erred in denying, in part, the applications for such dismissal made by the defendants E. R. Bevins and Wendell F. Crockett in their returns to the rule to show cause of February 23, 1949, that is to say, the court erred in retaining said defendants E. R. Bevins and Wendell F. Crockett as defendants individually and only dismissing them in their respective capacities

as County Attorney for the County of Maui and
Deputy County Attorney for the County of Maui.

Dated at Honolulu, T. H., this 14th day of July,
1949.

/s/ RHODA V. LEWIS,
Assistant Attorney General.

[Endorsed]: Filed July 23, 1949.

[Title of Court of Appeals and Causes.]

STATEMENT OF POINTS ON APPEAL
PURSUANT TO RULE 19

Come now E. R. Bevins and Wendell F. Crockett,
defendant-appellants above named and for their
statement of points on appeal pursuant to Rule 19
hereby join in and adopt the Statement of Points
filed by the appellants Walter D. Ackerman, Jr.,
and Jean Lane.

Dated: July 15, 1949.

/s/ E. R. BEVINS,
In Propria Persona.

/s/ WENDELL F. CROCKETT,
In Propria Persona.

[Endorsed]: Filed July 23, 1949.